SUPREME COURT, U.S.
MAR 8 1967
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No. ~~1109~~ 56

In the

Supreme Court of the United States

OCTOBER TERM, 1966

INTERSTATE CIRCUIT, INC., et al.,
Appellant,

v.

CITY OF DALLAS,
Appellee.

On Appeal from the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas Sitting at Dallas

JURISDICTIONAL STATEMENT

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In the

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OCTOBER TERM, 1966

INTERSTATE CIRCUIT, INC., et al.,

Appellant,

v.

CITY OF DALLAS,

Appellee.

On Appeal from the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas Sitting at Dallas

JURISDICTIONAL STATEMENT

Appellant, Interstate Circuit, Inc., appeals from the Judgment of the Court of Civil Appeals, Fifth Supreme Judicial District of Texas, Sitting at Dallas, which was entered on April 5, 1966, affirming a Temporary Injunction awarded to the City of Dallas by a Dallas District Court. The Texas Supreme Court refused the Application for Writ of Error with the notation of "Writ Refused, No Reversible Error". Appellant Interstate submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal, and that a substantial question is presented.

OPINION BELOW

The opinion of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, Sitting at Dallas, is reported in 402 S.W. 2d 770, and is found herein at Appendix A, p. 1. The judgment of the District Court is not reported but is included in Appendix C, p. 19.

JURISDICTION

This suit was brought by the City of Dallas, seeking a Temporary Injunction to affirm the decision of the Dallas Motion Picture Classification Board, which had classified the motion picture, *Viva Maria*, as "not suitable for young persons". This Board was created by Dallas City Ordinance 11284, (Appendix B, p. 5), and purported to act under the authority granted to it by this ordinance. The judgment of the District Court, affirming the decision of the Board, was entered on February 18, 1966. (Appendix C, p. 20). The judgment entered that day included a Notice of Appeal by Interstate, and within the time prescribed by law, the case was brought before the Court of Civil Appeals. That court, on April 5, affirmed the judgment of the District Court. (Appendix A, p. 1).

Following the judgment of the Court of Civil Appeals, Appellant filed its Motion for Rehearing which was overruled on April 25, (Appendix C, p. 25), and on May 19, the Appellant filed its Petition for Writ of Error to the Supreme Court of Texas with the clerk of the Court of Civil Appeals, who sent the record to the Texas Supreme Court on May 20. (Appendix C, p. 2).

This Petition was received and filed by the Supreme Court of Texas on May 23, and the City of Dallas mailed its Reply on May 31.[1]

The Supreme Court of Texas denied the Petition for Writ of Error with endorsement "Writ Refused, n.r.e." on July 27. (Appendix C, p. 29). Pursuant to the Rules of Civil Procedure in the Texas Court, Appellant filed its Motion for Rehearing on August 10, (Appendix C, p. 30) and thereafter, on September 30, filed a Supplemental Motion. (Appendix C, p. 39). The Motions for Rehearing were overruled by the Texas Supreme Court on October 19, 1966. (Appendix C, p. 45)

The jurisdiction of the Supreme Court to review this decision by direct appeal is established by Title 28, U.S. Code, Secton 1257 (2), (1948).

QUESTIONS PRESENTED

1. Whether Dallas City Ordinance 11284 is unconstitutional because it does not guarantee a prompt final judicial decision to review actions of the Dallas Motion Picture Classification Board in classifying a motion picture as "not suitable for young persons"?

2. Whether Dallas City Ordinance 11284 is unconstitutional because it prohibits the free exhibition of motion pictures on standards that are vague and ambiguous instead of limiting the restraint on free exhibition to those pictures which are obscene as that term has been defined by this Court?

[1] See Chronology Table, Appendix C, p. 2, Item 26.

3. Whether the Dallas Moton Picture Classification Board and the lower courts each applied unconstitutional standards in classifying the motion picture, *Viva Maria*, as "not suitable for young persons"? As sub-parts of this question, it should be determined, (a) whether members of the Dallas Motion Picture Classification Board used the term "sacrilegious" as a basis for determining that the picture was "not suitable for young persons"; (b) whether the members of the Classification Board used the geographic area of the City of Dallas in determining the community standard; and, (c) whether the members of the Classification Board and trial court based their conclusion that the picture was not suitable upon a few isolated scenes rather than considering the dominant theme of the picture as a whole.

STATUTES INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States, Article I, Section 8, of the Texas Constitution, Article 527 of the Texas Penal Code, and Dallas City Ordinance No. 11284 are involved in this case. These are set forth in Appendix B.

STATEMENT

This suit involves the motion picture, *Viva Maria*, and the classification of this picture as "not suitable for young persons", by the City of Dallas under the provisions of Ordinance No. 11284. This classification results in a partial censorship of the movie here in question.

The parties to this appeal are Interstate Circuit, Inc., a corporation engaged in the exhibition of commercial motion pictures in Dallas and other Texas cities, United Artists, Inc., Intervenor, a corporation engaged in the distribution of commercial motion pictures in Dallas and other Texas cities, as appellants, and the City of Dallas as appellee. The ordinance in question is Dallas City Ordinance No. 11284.

Dallas City Ordinance No. 11284 was passed on November 22, 1965. (Appendix B, p. 5). The ordinance created the Dallas Motion Picture Classification Board, and gave the board certain standards for determining whether a motion picture was "suitable" or "not suitable for young persons". (Appendix B, p. 8). A young person was defined as one under sixteen years of age. In deference to the standards set forth in *Freedman v. State of Maryland*, 380 U.S. 51, (1965), there was included in the ordinance a section entitled "Judicial Review." (Appendix B, p. 16). The ordinance requires the City to file responsive pleadings within a period of time less than allowed by the Texas Rules of Civil Procedure and to join with the exhibitor in motions asking trial and appellate courts to advance the case. (Appendix B, pp. 16-19).

The present case arises under the ordinance. There is a Chronology Table included in the Appendix showing the dates that relevant events transpired. This chart reflects that prior to February 14, Interstate applied for a license to exhibit *Viva Maria* for a general audience, and that after a hearing, the picture was classified as "not suitable for young persons". A notice of non-acceptance was filed by Interstate, and on February 14, the present suit was brought by the City of Dallas. (Appendix C, p. 4).

In response to the City's petition, Interstate filed an Answer and Cross-Action (Appendix C, p. 8), raising the constitutional questions that (1) the ordinance establishes a system of prior restraint and censorship of communication, (2) the terms for classifying motion pictures provided in the ordinance are vague and indefinite, and not limited to obscenity, and (3) the ordinance does not provide for a prompt, final judicial determination as to the validity of the classification. In further answer, Interstate pleaded that commercial motion pictures are protected by Article 527 of the Texas Penal Code. (Appendix C, pp. 9-13, Defendant's Answer, Paragraph VI, (1), (2), (3), and (7), and Paragraph VII). As Cross-Plaintiff, Interstate sought injunctive relief against the enforcement of the ordinance, and a judgment to declare it invalid, raising the same points. (Paragraph XII and XIV, and Prayer, Section 2, 3, and 4, Appendix C, pp. 13-14).

At the conclusion of the trial, the City was awarded a temporary injunction against Interstate, prohibiting the showing of the motion picture, *Viva Maria*, without the notation that it is "not suitable for young persons". From this judgment, Interstate appealed. Following a Motion to Advance, in which the City joined, the Court of Civil Appeals set the case for hearing on March 28, (Appendix C, p. 21) and on that day, the court viewed the picture and heard oral argument. Its judgment affirming the temporary injunction, together with written opinion and a concurring opinion, was rendered on April 5. A Motion for Rehearing by Interstate re-urged the identical points of the first brief. (Appendix C, p. 22). This motion was overruled on April 25.

On May 19, Interstate filed its Petition for Writ of Error to the Supreme Court of Texas.[2] The Petition for Writ of Error brought forward the same constitutional points urged in the Court of Civil Appeals, asking the Supreme Court of Texas to give relief on these grounds. (Appendix C, p. 25). The City filed its Reply with the Clerk of the Supreme Court, mailing the same on May 31, (Chronology Table), and on June 6, the City and Interstate filed a joint Motion with the Supreme Court of Texas, asking that this case be advanced for submission. (Appendix C, p. 27). No action appears to have been taken by the Court on the Motion to Advance, and on July 27, the Petition for Writ of Error was denied with the endorsement "Writ Refused, No Reversible Error (Appendix C, p. 29), which is an action provided for by Rule 483 of the Texas Rules of Civil Procedure.

On August 30, Interstate filed its Motion for Rehearing. (Appendix C, p. 30).[3]

A Supplemental Motion for Rehearing was filed by Interstate on September 30, 1966, presenting to the Texas Supreme Court the "Chart of Ten Cases Before and After *Interstate Circuit, Inc. v. City of Dallas*", showing a summary of docket notations of cases in that court at the time the *Viva Maria* case was on appeal. (Appendix C, p. 39). This motion for rehearing was overruled on October 19. The Texas

[2] The petition was filed with the Clerk of the Court of Civil Appeals on this date; he mailed it to the Clerk of the Supreme Court who filed it May 23. (See Chronology Table, Appendix C. p. 2.)

[3] On August 30, 1966, the United States Court of Appeals for the Fifth Circuit rendered its opinion in *Interstate Circuit, Inc. v. City of Dallas, 366 F. 2d 590*, affirming the District Court decision and citing the endorsement of the Texas Supreme Court, "Writ Refused, n.r.e." in the present case. (p. 601).

Supreme Court refused to take jurisdiction of the case, causing the judgment of the Court of Civil Appeals to become final; and from that judgment, this appeal has been taken.

The Supreme Court of Texas denied the Petition for Writ of Error and affirmed the judgment of the Court of Civil Appeals without viewing the motion picture. (Motion for Rehearing, Appendix C, p. 30).

There is no contention that the City was in default under the terms of this ordinance in responding to any pleading, or taking any action. The specific contention is that a prompt, final judicial determination of the action of the censor is not accorded to the exhibitor.

The City of Dallas passed Ordinance 10963 on April 5, 1965, which provided for the classification of motion pictures. Interstate, along with others, brought suit in the United States District Court, *Interstate Circuit, Inc. v. City of Dallas*, 247 F. Supp. 906 (N.D. Tex. 1965), seeking to have this ordinance declared unconstitutional. This ordinance was similar to the one involved in this case, but provided an age limit of eighteen years, and a slightly different system of judicial review. On November 9, 1965, the ordinance was declared unconstitutional by the District Court, primarily on the grounds that it did not provide for a prompt, final, judicial determination of the action of censor.

Dallas City Ordinance 11284 was passed on November 22, 1965. Interstate, together with other exhibitors, again brought suit in the United States District Court, *Interstate Circuit*,

Inc. v. City of Dallas, 249 F. Supp. 19 (N.D. Tex. 1965), seeking an injunction against the enforcement of the ordinance and a judgment declaring it to be unconstitutional.

The United States District Court found that the ordinance was not invalid when its terms were construed to permit the classification of movies when they are "obscene when viewed by an audience of young persons." (p. 24) The District Court also held that the system of judicial review provided by the ordinance would give the exhibitors a final judicial determination by the Supreme Court of Texas within thirty-five days after suit was filed in the State District Court. (p. 23) The ordinance did not become effective until January 20, 1966, because of a stay order issued by the District Court. Following the judgment of the trial court in that case, the exhibitors and the City appealed, *Interstate Circuit, Inc. v. City of Dallas*, 366 F. 2d 590 (5th Cir. 1966), and from the judgment of that court, have now sought certiorari in a proceeding styled *Interstate Circuit, Inc., et al. v. City of Dallas, Cause No. 971*, and Reverse Title, Cause No. 978, presently pending before this court.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents several important constitutional questions. This most important of these questions turns upon an interpretation of *Freedman v. State of Maryland*, 380 U.S. 51 (1965), which is understood to require that any system of censorship must provide a prompt, final, judicial determination that the action of the censor board is correct. In this case, the motion picture, *Viva Maria*, was classified "not suit-

able for young persons". The City filed suit on February 14, 1966, seeking a temporary injunction affirming this classification. Two hundred forty-seven days later, on October 19, 1966, the Texas Supreme Court overruled Interstate's Motion for Rehearing which made the judgment of the Court of Civil Appeals final. That judgment affirmed the decision of the trial court granting a temporary injunction prohibiting the exhibition of the picture to persons under sixteen years of age.

The Texas Supreme Court did not specifically affirm the decision, but gave the Court of Civil Appeals opinion an endorsement "Writ Refused, No Reversible Error." (Tex. Rul. Civ. Proc. 483). This notation indicates some error in the opinion of the Court of Civil Appeals.

Interstate attacked the ordinance here on the grounds that it did not provide a prompt, final, judicial determination as to the validity of the classification. Approximately nine months appears to be an unreasonable time to wait for a decision on any form of censorship. What is a reasonable time for prompt judicial review is of importance to the motion picture industry both in general and in Texas, as is demonstrated by this case. It is a question of general importance. *United States v. One Carton Positive Motion Picture Film Entitled "491"*, 367 F. 2d 889 (2d Cir. 1966). It may be unwise to give a precise number of days as a minimum period for prompt judicial review, but the Texas judicial system does not provide a special trial and appellate procedure for censorship cases similar to that passed on by Maryland cases. *Trans-Lux Distribution Corp. v. Maryland State Board of*

Censors, 240 Md. 98, 213 A. 2d 235 (1965). In the case arising under Ordinance No. 10963, the first classification ordinance passed by the City of Dallas, the United States District Court said:

> "Regardless of whether the injunction provided for in Section 46A-7 of the Ordinance involved herein is interpreted as temporary or permanent, there being no provision in the Texas statutes for prompt judicial review in the trial and appellate courts, and experience being that risk of delay is built into the Texas procedure, the Ordinance in question lacks sufficient procedural safeguards designed to obviate the dangers of a censorship system. (Citing cases)".

Interstate Circuit, Inc. v. City of Dallas, 247 F. Supp. 906, 911 (1965). This opinion, rendererd November 9, 1965, declared Ordinance No. 10963 to be unconstitutional.

Ordinance No. 11284, under which the present case arises, was passed on November 22, 1965. The legislature was not in session, and no decision of a Texas appellate court changed the accuracy of this finding made in the first case between these dates. The present ordinance was found to provide a system of review that satisfied Freedman's requirements. *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp. 19 (N.D. Tex. 1965). The court held that a final decision on a case under this ordinance could be obtained in thirty-five days. (p. 23).

This decision was appealed, and is presently before this court, but it was cited as authority by the Texas courts in dealing with *Viva Maria*.

Jacobellis v. State of Ohio, 374 U.S. 184 (1964), teaches that this Court must review the subject matter in censorship cases in making an independent judgment as to whether it is obscene or constitutionally protected.

The *Jacobellis* decision should have been followed by the Texas Supreme Court, but it denied the writ of error and overruled the motion for rehearing without seeing the motion picture. (Appendix C, p. 45). The Texas Court followed its precedent of *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 358 S.W. 2d 589 (1962), where it refused to grant a writ of error in a similar case, stating that the purpose of a temporary injunction is to preserve the status quo, and that to have granted the petitioner in *Janus* the relief sought would have rendered the question moot, thereby defeating the purpose of a temporary injunction.

The holding in *Janus* was perhaps erroneous in 1962. It was certainly shown to be erroneous in 1964 by the decision in *Jacobellis*.

The ruling by the Texas Supreme Court has the practical effect of making the decision of the Court of Civil Appeals final, notwithstanding the fact that a temporary injunction is ordinarily not a final judgment. *Furr's, Inc. v. United Specialty Advertising Company*, 385 S.W. 2nd, 456 (Tex. Civ. App. 1961) error ref. n.r.e., cert. denied, *United Specialty Advertising Company v. Furr's, Inc.*, 382 U.S. 824 (1965), held that where testimony was fully developed in a temporary injunction proceeding, the findings from such proceedings become the law of the case, if not *res judicata*, in a subsequent trial for a permanent injunction and damages. As a result of the

holding in *Furr's*, the City has won in the Texas judicial system insofar as this case is concerned. If Interstate should seek a trial on the merits asking that the temporary injunction be dissolved and that the picture be held "suitable for young persons", the trial and the Court of Civil Appeals must see the picture again, if technical procedure is to be followed. There is no reason to think that either of the courts would have a different opinion. There is little hope that the Texas Supreme Court would grant a writ of error. This would be a complete exercise in futility because in this kind of case, there is logical reason to believe that the former ruling would be held to be *res judicata*, or the law of the case. It would be too burdensome to try this entire case a second time.

Denying a writ of error on the grounds of *Janus* is denying judicial review altogether; denying the writ of error without determining whether it is protected material under the First Amendment continues a procedure that violates the teaching of *Jacobellis*. By avoiding a decision in this case, The Texas Supreme Court relegates censorship cases to this court for screening and determination and places any interested party, whether exhibitor or distributor, under the burden of the delay and expense which is necessary to invoke the jurisdiction of this Court.

Ordinance 11284 provides standards for classifying motion pictures in Section 46A-1(f) where "not suitable for young persons" is defined. (Appendix B, p. 8). This language uses such terms as *brutality, criminal violence, or depravity, sexual promiscuity*, etc., and directs the Board to determine whether the "*harmful effects* outweigh artistic or educational

values***". (emphasis supplied) The United States District Court opinion in *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp. 19 (N.D. Tex. 1965), which held that this standard was valid to the extent that such films are obscene when viewed by an audience of young people, was cited to all Texas courts considering the *Viva Maria* case. They chose to apply the language of the ordinance as written, rather than as construed by the Court in that case.

Although "sacrilegious" as a standard for censorship had been held unconstitutional in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 506 (1952), John Gilliland, a Vice-Chairman of the board, said that some scenes approved violence by the clergy; and that while he did not consider this sacrilegious, it entered into the board's decision. (Appendix C, p. 15). Reverend Maceo, a member of the Board, would not adopt the word "sacrilegious", but he said that, in his opinion, the treatment accorded the clergy in these scenes was "mockery". (Appendix C, p. 18).

The only contemporary community standard that he applied was that of the City of Dallas (Appendix C, p. 17), even though a national standard of decency had been established by this Court in *Manuel Enterprise, Inc. v. Day*, 370 U.S. 478, 488 (1962), and affirmed in *Jacobellis, supra*, (192-195).

In 1961, Article 527 of the Texas Penal Code established a contemporary community standard as including a geographic area not less than the State of Texas. (Appendix B, p. 3). Both Federal and State standards were disregarded in limiting the geographic area to the Dallas community.

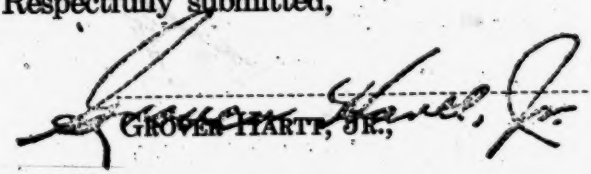
At the conclusion of the trial, the district judge said:

> "* * * there are two or three features in this picture that look to me would be unsuitable to (for) young people * * *. So I enjoin the exhibitors * * *." (Appendix C, pp. 18-19).

The granting of a temporary injunction, and the finding that the picture was "not suitable for young persons" was based on a decision contrary to *Roth v. United States*, 354 U.S. 476, 489 (1954), and the many cases which have construed it. Also, it is directly contrary to Judge Hughes' opinion which announced a definition of obscene for young persons. *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp. 19, 24 (N.D. Tex. 1965.)

The errors discussed above bear directly on the right of free communication. They are obviously material and thereby constitute an abuse of discretion in the judgments which held *Viva Maria* "not suitable for young persons".

Respectfully submitted,



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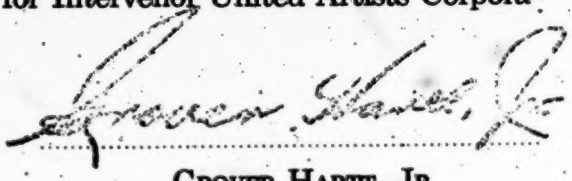
CERTIFICATE OF SERVICE

A copy of this appeal is being mailed to Mr. N. Alex Bickley, City Attorney, Municipal Building, Dallas, Texas, Attorney for the Appellee, and Mr. Paul Carrington, Mercantile Bank Bldg., Attorney for Intervenor United Artists Corporation.



GROVER HARTT, JR.

APPENDIX A

Interstate Circuit, Inc. v. City of Dallas, 402 S.W. 2d 770 (Tex. Civ. App. 1966) error ref., n.r.e.

On February 14, 1966 the City of Dallas, appellee, filed suit against Interstate Circuit, Inc., appellant, an exhibitor of commercial motion pictures, seeking temporary and permanent injunctions restraining said appellant (1) from exhibiting the film "Viva Maria" without advertising the film as "not suitable for young persons" and (2) from violating Ordinance No. 11284, as amended, by exhibiting any film contrary to the provisions of the Ordinance.

On February 16, 1966 United Artists Corporation, asserting that it is a distributor of motion pictures and is the exclusive owner of distribution rights of the film "Viva Maria", intervened in opposition to the City.

On February 18, 1966, following a hearing begun the day before, the court granted the City's prayer for a temporary injunction. The City had offered to try the case on its merits at the same time, that is, try the whole case on February 18, 1966, including the application for permanent injunction. This offer was declined by appellants.

Ordinance No. 11284 known as the "Motion Picture Classification Ordinance" was passed by the City Council of the City of Dallas on November 22, 1965. It is too long to be copied here in its entirety. A summary of its material provisions will be found in a footnote hereto.*

* The provisions of the ordinance which are material to this controversy may be summarized as follows:
Sec. 46A-1. Definition of Terms:
(d) A young person is defined as being any person who has not attained his sixteenth birthday.

The Ordinance itself has already been the subject of court action. A number of motion picture exhibitors filed suit in the United States District Court for the Northern District of Texas seeking an injunction on the ground that the Ordinance itself is violative of the First and Fourteenth Amendments to the Constitution of the United States. On December 23, 1965 Honorable Sarah T. Hughes, judge of that court, held in effect that, though Section 46A-6 of the Ordinance is unconstitutional, the rest of the Ordinance is not violative of the Constitution. Interstate Circuit, Inc. v. City of Dallas, 249 F. Supp. 19. Appended to the opinion is Appendix A—a reproduction in full of the Ordinance. The above judgment is now pending on appeal before the United States Court of Appeals.

(f) The standards to be applied in determining whether films shall be classified as "not suitable for young persons are:

"(1) Describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the judgment of the Board, likely to incite or encourage crime or delinquency on the part of young persons; or

"(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relations in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest.

"A film shall be considered 'likely to incite or encourage' crime delinquency or sexual promiscuity on the part of young persons, if, in the judgment of the Board, there is a substantial probability that it will create the impression on young persons that such conduct is profitable, desirable, acceptable, respectable, praiseworthy or commonly accepted. A film shall be considered as appealing to 'prurient interest' of young persons, if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire. In determining whether a film is 'not suitable for young persons', the Board shall consider the film as a whole, rather than isolated portions, and shall determine whether its harmful effects outweigh artistic or educational values such film may have for young persons."

In the appeal now before us Section 46A-6 is not involved. No violation of that section is alleged. The City has not undertaken to suspend appellants' license and does not seek to do so. Therefore, we shall not pass on the constitutionality of Section 46A-6, which under the terms of Section 46A-11 may be treated as severable from the rest of the Ordinance.

The two appellants have filed separate briefs. Interstate Circuit, Inc., in its first six points on appeal, and United Artists Corporation in all of its ten points, assert that the Ordinance and its application in this case are violative of the First and Fourteenth Amendments to the Constitution of the United States and of Article 1, Sections 8 and 19 of the Constitution of the State of Texas. We do not agree with appellants.

Sec. 46A-2. Establishment of Board:

This section provides for the creation of the Dallas Motion Picture Classification Board.

Sec. 46A-3. Classification Procedure:

(a) Before exhibiting a film the exhibitor shall file a proposed classification of the film together with a resume of the plot and other information. If the Board approves the exhibitor's proposed classification it shall file its approval. If the Board fails either to file an approved classification or to hold a hearing within five days, the exhibitor's proposed classification shall be considered approved.

(b) If the Board is not satisfied with the exhibitor's proposed classification, it may request an exhibition of the film before the Board at the earliest time practicable with due regard to the availability of the film. At the screening before the Board the exhibitor may appear, make such statements and present such evidence as he may desire. The Board shall file its classification within two days after such screening.

(c) Any initial or subsequent exhibitor may file an application for a change in classification. If the prior classification should be changed to "not suitable for young persons" the exhibitor shall have seven days in which to alter his advertising and audience policy.

(d) The Board shall notify all exhibitors of its classification order.

Of course Article 1, Sections 8 and 19 of the Constitution of the State of Texas does not override the Constitution of the United States. Therefore, we shall in the main confine our discussion to the latter Constitution and interpretations thereof, especially with reference to civil suits since this suit does not involve a criminal action, as did the case of Malone v. State of Texas, 339 S.W. 2d 666.

This is not a totally suppressive ordinance, or one that would totally deny the exhibition to anyone of the picture "Viva Maria" or any other classified film. It does not in any way prohibit the exhibition of any classified picture to adults. It does not even prohibit the exhibition of the picture to any child under the age of sixteen years if accompanied by parent, guardian, husband or wife. It does not prohibit exhibitors from exhibiting pictures classified "not suitable for young persons". It does not prohibit distributors from distributing a picture so classified. It is in the nature of a classification ordinance, the purpose of which is to regulate the exhibition of classified pictures to children.

By providing for such regulation the Ordinance does not contravene the freedom of speech provisions of our Constitu-

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(e) The classification shall be binding on any subsequent exhibitor unless a change in classification is made.

Sec. 46A-4. Offenses:

(a) It shall be unlawful for an exhibitor (1) to exhibit a film which has not been classified; (2) and (3) to exhibit any film classified "not suitable for young persons" under sixteen years of age unless advertising and display media state that the picture is so classified; (4) and (5) knowingly to sell or give to a young person a ticket to a film classified "unsuitable for young persons", or knowingly to permit a young person to view such film.

(d) It shall be a valid defense to any prosecution or other proceeding under the Ordinance that the young person was accompanied by his parent, legal guardian, husband or wife.

tions. The Supreme Court of the United States has itself suggested that such regulation is proper. We quote from the opinion in Jacobellis v. Ohio, 378 U.S. 184, 12 L. Ed. 2d 793, 84 S. Ct. 1676:

> "We recognize the legitimate and indeed exigent interest of States and localities throughout the Nation in preventing the dissemination of material *deemed harmful to children.* But that interest does not justify a total suppression of such material, the effect of which would be to 'reduce the adult population. . . *to reading only what is fit for children.*' Butler v. Michigan, 352 U.S. 380, 383 1 L. Ed. 2d 412, 414, 77 S. Ct. 524. State and local authorities might well consider whether their objectives in this area would be better served by laws aimed specifically at preventing distribution of objectional material to children, rather than at totally prohibiting its dissemination." (Emphasis supplied.)

See also Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 88 L. Ed. 645, and People v. Walton, 161 P.2d 498.

Sec. 46A-5. License:

Every exhibitor holding a general motion picture license shall be entitled to issuance of a license to exhibit films classified "not suitable for young persons."

Sec. 46A-6. Revocation or Suspension of License:

Upon complaint being filed that any exhibitor has repeatedly violated the provisions of the Ordinance or has persistently failed to use reasonable diligence to determine whether those seeking admittance to the exhibition of a classified film, the City Council may after notice and hearing suspend for one year the exhibitor's license for the showing of classified pictures.

Sec. 46A-7. Judicial Review:

(a) Within two days after filing of the classification by the Board, any exhibitor may file a notice of nonacceptance. If the Board desires to contest the exhibitor's nonacceptance, it shall:

(1) Make application in court within three days for a temporary and permanent injunction.

(2) Have application for temporary injunction set for hearing within five days. If the exhibitor waives notice pursuant to rules of procedure and requests a hearing on the merits on the day set for the hearing on the temporary injunction, the Board shall be

Freedom of speech, mighty bulwark that it is in the preservation of our liberties, is not an absolute right—a truth that is recognized by court decisions. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 86 L. Ed. 1031, 62 S. Ct. 766; and Times Film Corp. v. Chicago, 365 U.S. 43, 5 L. Ed. 2d 403, 81 S. Ct. 391. We do not believe that our forefathers in adopting our constitutional provisions or that subsequent interpreters thereof intended to require of children the same discretion, the same mature judgment, or the same responsibility in sex matters that we do of adults. Freedom of speech does not include the right to teach children that sexual promiscuity is to be approved and accepted as a standard of conduct. And to so hold is not merely to embrace a contemporary local community standard as appellants contend. It involves a contemporary national standard.

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required to waive its application for temporary injunction and shall join in such request.

(3) In the event the exhibitor appeals the City shall reply to appellant's brief within five days.

(4) Same in substance as Paragraph (3) if application for writ is made to Supreme Court of Texas by exhibitor.

(5) If trial court denies the Board's application for injunction and Board appeals, Board shall be required to waive all periods of time allowed it by Texas Rules of Civil Procedure, file motion for new trial only if required and then within two days; shall not amend its motion and shall obtain a hearing within five days. Board shall perfect appeal to Court of Civil Appeals including filing of Transcript, Statement of Facts and brief within ten days and shall then file a motion requesting the Court of Civil Appeals to advance the submission of the appeal.

(6) If the Court of Civil Appeals reverses the trial court's injunction order, or if the court refuses to reverse the order, provisions are made similar to those outlined in Paragraph (5) above for the hearing of and decision by the Supreme Court of Texas.

Sec. 46A-10. Exception to State Law:

Nothing in Ordinance shall be construed to regulate public exhibitions pre-empted by Article 527 of Texas Penal Code.

Sec. 46A-11. *Severability Clause:*

Should any section of the Ordinance be held invalid such holding shall not render invalid any other section, the various sections, etc. being deemed severable for this purpose.

This Ordinance avoids constitutional infirmity though it provides for a prior submission of a film under some circumstances. Times Film Corp. v. Chicago, 365 U.S. 43, 5 L. Ed. 2d 403, 81 S. Ct. 391. The process under the terms of the Ordinance takes place under procedural safeguards which require that (1) the burden of proving that the film is not protected rests on the City; (2) the exhibitor is assured by the Ordinance and authoritative judicial construction that within a specified brief period of time the City will ether issue a permit or go to court to obtain a regulated showing of the film; (3) any restraint in advance of final adjudication must be for the shortest period of time compatible with sound judicial resolution; and (4) the procedure must assure a prompt final judicial decision. These are the tests laid down by the Supreme Court of the United States in Freedom v. Maryland, 380 U.S. 51, 13 L. Ed. 2d 649, 85 S. Ct. 734 in a *total censorship case.*

The Texas Rules of Civil Procedure grant powers to courts to make prompt judicial decisions. In the district courts Rule 245(c) provides that actions may be placed on the trial calendar "in such other manner as the courts deem expedient" and Rule 330(b), applicable to Dallas courts, provides that "the court may set any case for trial at any time so as to allow the parties reasonable time for preparation."

In the appellate courts Rule 410, after listing certain types of cases which shall have precedence in Courts of Civil Appeals then states in Section (f): "Such other cases

as the court by order or rule, may direct." Rule 497 provides that "Causes may be tried in such order as the justices of the Supreme Court may deem to the best interest and convenience of the parties or their attorneys."

The case now before us was filed in the trial court February 14, 1966, tried February 18, 1966, submitted to this court March 28, 1966 and decided April 5, 1966. Appellants surely have no real basis to complain that the judicial procedural time table has been inadequate to meet the requirements set out in the Freedman case.

Appellants complain that the Ordinance leaves too much to the judgment and discretion of the Board. Appellants apparently overlook the fact that this case was not tried in the district court under the "substantial evidence rule", which requires a court to approve an administrative agency's decision if there is any substantial evidence to support it. This was a "*de novo*" trial in which the court was free to make and obviously did make its own independent findings regardless of the findings or judgment of the Board.

Appellants say that the Ordinance is invalid because it provides standards for the judgment which are too broad, vague, uncertain and indefinite to permit of enforcement or to give fair notice of the type of films which may be subject to classification. We see no such infirmity in the Ordinance. In Subsection (f) of Section 46A-1 the Ordinance sets definite standards for classification. Absolute precision is not required, What is required and what we think the Ordinance affords is a sufficiently definite warning of the standards

which are to guide the Board and the Courts in classifying films. As was said in Roth v. United States, 354 U.S. 476, 1 L. Ed. 2d 1498 (at page 1510), 77 S. Ct. 1304:

> "Many decisions have recognized that these terms of obscenity statutes are not precise. *This Court, however, has consistently held that lack of precision is not itself offensive to the requirements of due process.* '. . . The Constitution does not require impossible standards'; all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. . . .' United States v. Petrillo, 332 U.S. 1, 7, 8, 91 L. Ed. 1877, 1883, 67 S. Ct. 1538. These words, applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the conduct proscribed and mark '. . . boundaries sufficiently distinct for judges and juries fairly to administer the law. . . . That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous. . . .'" (Emphasis ours.)

Appellants further say the Ordinance is invalid because it involves a contemporary community standard of a local community only, the City of Dallas, and not the State of Texas or the United States. Again we cannot agree with appellants. To regulate to a limited extent the portrayal to children under the age of sixteen years of sexual promiscuity as acceptable is not to apply merely a local community standard. It is to apply a contemporary national standard.

Appellants contend that to support the validity of the Ordinance or any action taken under its terms the City must prove that a film classified "not suitable for young persons"

must pass three tests. We quote from the brief of the distributor, appellant United Artists Corporation:

> "1. It must deal with sex in a manner appealing to the prurient interest, judged by the average person, applying contemporary community standards, and considering its dominant theme as a whole. Roth v. United States, 344 U.S. 476, 1 L. Ed. 2d 1498 (1957); and, 2. It must be patently offensive—so offensive on its face as to affront community standards of decency. Manual Enterprises, Inc. v. Day, 370 U.S. 478 L. Ed. 2d 639 (1962); and, 3. It must be utterly without redeeming value; hence the good may not be weighed against the bad. Jacobellis v. Ohio, 378 U.S. 184, 12 L. Ed. 2d 793 (1964)."

We bow to the pronouncements of the Supreme Court of the United States. But we do not believe that the holdings above set out are applicable here. In all of the cited cases the court was considering enactments which sought to impose total censorship. Their effect would have been to ban completely the sale, distribution or exhibiting of the matter involved either to adults or children. The Ordinance we have before us for consideration in this case does no such thing. As we have already pointed out it does not call for total censorship in any instance. It simply applies limited regulations of the conditions under which certain classified pictures may be exhibited to children under the age of sixteen years.

If we be in error in the above holding we nevertheless hold that the Ordinance and its application in this case do not violate the constitutional provisions. We have read the evidence reproduced in the statement of facts and viewed

the film "Viva Maria." The latter was exhibited for our benefit in the court room. The evidence amply supports the implied findings of the Board and the district court that the film offends in all of the particulars named under the three headings quoted in the foregoing excerpt from appellant's brief.

If the three tests are to be applied in this case we think test No. 1 should be modified so that in place of the words "judged by the average person" there should be substituted the words "judged by the average *young person*"—meaning a person under the age of sixteen years. However, we would make the same holding if test No. 1 were not so modified.

In the case of John Cleland's "Memoirs of a Woman of Pleasure" vs Attorney General of the Commonwealth of Massachusetts decided March 21, 1966, 34 "The United States Law Week" 4236, the Supreme Court of the United States reversed a judgment of a Massachusetts court banning the above named book. The court said, "A book cannot be proscribed unless it is found to be utterly without redeeming social value." But the court then went on to say:

> "It does not necessarily follow from this reversal that a determination that 'Memoirs' is obscene * * * would be improper under all circumstances. On the premise, which we have no occasion to assess, that 'Memoirs' has the requisite prurient appeal and is patently offensive, *but has only a minimum of social value*, the circumstances of production, sale, and publicity are relevant in determining whether or not the publication and distribution of the book is constitutionally protected." (Emphasis supplied.)

We hold that "Viva Maria" has only a minimum of social value, if any at all, as to children under the age of sixteen years. And since it is permitted to be exhibited subject only to limited regulations, it is not constitutionally protected from the terms of the Ordinance which the City seeks to apply or from the terms of the temporary injunction granted by the trial court.

Appellant United Artists Corporation, distributor, asserts that it has the same constitutional rights as the exhibitor, yet it is not mentioned in the Ordinance and was not notified of the hearings. There is no merit to this contention. United Artists Corporation does not claim that it is an exhibitor of this or any other picture. It is a distributor and there is nothing in the Ordinance to prevent distribution of the film. The Ordinance has to do with the exhibition of the film to children, not its distribution. Besides, United Artists Corporation intervened in the lawsuit and was given full opportunity to be heard. It has not been harmed.

We overrule the first six points on appeal of appellant Interstate Circuit, Inc. and all ten points of appellant United Artists Corporation.

In its seventh point appellant Interstate Circuit says that under Article 527 of the Texas Penal Code the State preempted to regulation of motion pictures, so that a municipality may not enter the field. In its eighth to sixteenth points, inclusive, appellant complains of the action of the court in overruling exceptions to appellee's pleadings. In its seventeenth point appellant objects to the court's failure

to set forth reasons to justify the granting of the temporary injunction. In its eighteenth and nineteenth points appellant alleges that the temporary injunction was not supported by pleadings and the court misapplied the law. We have considered all these additional points and find no merit in them. They are overruled.

Justice Bateman has written a concurring opinion in which he presents his views somewhat in detail. I have read his concurring opinion and agree with his views as stated by him.

The judgment of the trial court is
AFFIRMED.

DIXON, *Chief Justice*

Bateman, Justice (Concurring)

I concur fully with everything written by my Brother Dixon in his opinion and would like to enlarge somewhat on several of the decisions contained therein.

By its seventh point of error on appeal the appellant Interstate Circuit, Inc. says the court erred in refusing to hold that Article 527 of the Texas Penal Code pre-empted the field of regulating motion pictures, thus making invalid such attempted action by the City. The first two sections of Article 527, Penal Code of Texas, as amended in 1961, prohibit the doing of certain things, including the exhibition of obscene motion pictures, but Section 5 provides, in part, as follows:

> "The provisions of this Act shall not apply to any motion pictures produced or manufactured as commercial motion pictures which (1) have the seal under the Production Code of the Motion Picture Association of America, Inc.; or (2) legally move in interstate commerce under Federal Law; or (3) are legally imported from foreign countries into the United States and have been passed by a Customs Office of the United States Government at any port of entry."

The evidence clearly shows that the film in question is what is known as a "commercial motion picture" and that it has moved, and will probably continue to move in interstate commerce. We think we can safely assume that such movements in interstate commerce will be "legal." Therefore, this motion picture, being one of a class specifically ex-

cepted from the effect of Article 527, is subject to regulation by the City.

Moreover, the City of Dallas, being a home rule city deriving its powers from Article 11, Section 5, of the Texas Constitution, has plenary charter powers which include the power to enact the ordinance here in question, its powers being subject only to the limitation that its charter and ordinances shall contain nothing inconsistent with the Texas and Federal Constitutions or the general laws enacted by the State Legislature. City of Fort Worth v. McDonald, Tex. Civ. App., 293 S.W. 2d 256, wr. ref. n.r.e.; Janus Films, Inc. v. City of Fort Worth, Tex. Civ. App., 354 S.W. 2d 597, wr. ref. n.r.e. *per curiam*, 163 Tex. 616, 358 S.W. 2d 589. Home rule cities have full authority to do anything the Legislature could have authorized them to do prior to adoption of the Home-Rule Amendment, the result being that it is not necessary to look to the acts of the Legislature for grants of power to such cities, but only for limitations on their powers. Forwood v. City of Taylor, 147 Tex. 161, 214 S.W. 2d 282, 286; Yellow Cab Transit Co. v. Tuck, Tex. Civ. App., 115 S.W. 2d 455, wr. ref.

Appellants take the position that in the light of certain pronouncements by the Supreme Court the picture "Viva Maria" is entitled to protection under the First and Fourteenth Amendments to the United States Constitution and Article 1, Section 8 of the Texas Constitution unless it can

be properly said that it is obscene; and that in determining whether it is obscene three tests must be applied, to wit:

> "1. It must deal with sex in a manner appealing to the prurient interest, judged by the average person, applying contemporary community standards, and considering its dominant theme as a whole. Roth v. United States, 344 U.S. 476, 1 L. Ed. 2d 1498 (1957); and,
>
> "2. It must be patently offensive—so offensive on its face as to affront community standards of decency. Manual Enterprises, Inc. v. Day, 370 U.S. 478, 8 L. Ed. 2d 639 (1962); and,
>
> "3. It must be utterly without redeeming value; hence, the good may not be weighed against the bad. Jacobellis v. Ohio, 378 U.S. 184, 12 L. Ed. 2d 793 (1964)."

It is my firm opinion that the constitutional guaranties of free speech may not properly be invoked to defeat the worthy purposes of the ordinance in question. The classification of a motion picture as "not suitable for young persons" is not by the terms of the ordinance made to depend on whether the motion picture is obscene, and I do not believe the United States Supreme Court intended, in Near v. Minnesota, 283 U.S. 697, 716, 75 L. Ed. 1357, 1367, or in any other case, to make such a stringent limitation on the powers of a state or city in this field.

The ordinance under examination, in defining the phrase "not suitable for young persons," does not employ the words "obscene" or "obscenity." The portrayal of sexual promiscuity in a motion picture may be accomplished with such finesse, or in such a subtle manner, that many would not

consider it obscene; yet, by its very adroitness or subtlety promiscuity would be made to appear to a young person to be highly desirable or praiseworthy and acceptable or commonly accepted. Conveying to young persons the idea that to be able to enjoy the pleasures of sexual gratification without being burdened with any accompanying responsibility or commitment, and with no retributive consequences, or even the slightest remorse, is acceptable behavior according to accepted standards of the American community, would in my opinion have a much more pernicious effect on the morals of the community than mere obscenities. To say that a community is powerless to protect its youth from such damage because of the constitutional safeguards of free speech is to my mind unconscionable and unacceptable.

We are also asked to dissolve the temporary injunction because the order does not contain a recitation of the judge's reasons for issuing the same, as required by Rule 683, T.R.C.P. It is true that this order merely recites that all parties were represented by attorneys and in person, that they announced ready for trial and that the court, after hearing the testimony and argument of counsel, and after having fully considered the same, together with the viewing in person of the motion picture "Viva Maria", is of the opinion and finds that the appellee is entitled to a temporary injunction. The order then proceeds to grant the temporary injunction. It is also true that several Texas cases have held that this

requirement of Rule 683 is mandatory and that the omission of the reasons for granting the injunction is fatal and requires reversal. Miller v. State, Tex. Civ. App., 305 S.W. 2d 663, no wr. hist.; Northcutt v. Waren, Tex. Civ. App., 326 S.W. 2d 10, wr. ref. n.r.e.; City of Houston v. Rose, Tex. Civ. App., 361 S.W. 2d 477, no wr. hist.

In Miller v. State, *supra*, the temporary injunction had been granted without notice to the defendant and without a hearing. There was neither pleading nor evidence that irreparable wrong, damage or injury was imminently threatened. The order did not state the reasons for its issuance. For all these reasons the order was reversed and remanded.

In Northcutt v. Waren, *supra*, there were also additional substantial grounds for reversal.

In City of Houston v. Rose, *supra*, although the failure to state the reasons for the injunction seems to have been the only ground on which the order was reversed, it was pointed out in the opinion that in several cases it had been held that the failure to set forth the reasons for granting a temporary injunction would not require a reversal "where the record affirmatively shows that no harm resulted."

It seems to be well settled by the following authorities that Rule 683 does not require a reversal when the record "affirmatively shows that no harm resulted." 31 Tex. Jur. 2d, INJUNCTIONS, § 157, p. 274; O'Daniel v. Libal, Tex. Civ.

App., 196 S.W. 2d 211, no wr. hist.; Gonzalez v. Rodriguez, Tex. Civ. App., 250 S.W. 2d 253, no wr. hist.; Rothermel v. Goodrich, Tex. Civ. App., 292 S.W. 2d 882, 884; Payton v. Hurst, etc. Clinic, Tex. Civ. App., 318 S.W. 2d 726, wr. ref. n.r.e. See also Transport Co. of Texas v. Robertson Transports, Inc., 152 Tex. 551, 261 S.W. 2d 549, and Garcia v. Sun Oil Co., Tex. Civ. App., 300 S.W. 2d 724, 735, wr. ref. n.r.e.

As pointed out in O'Daniel v. Libal, *supra*, "The purpose of the rule above referred to is to inform a party just what he is enjoined from doing and the reasons why he is so enjoined." It was also pointed out in that opinion that the application for temporary injunction was set down for hearing and that the appellant filed his answer, that both parties introduced several witnesses, some twenty witnesses testifying at the hearing, and that "the main and sole inquiry" was whether or not the act sought to be enjoined had or would result in a nuisance; that the appellant was familiar with the prayer of appellee's petition, had heard the statement of the court when he pronounced the judgment and that there could be "no doubt but what appellant knew what he was enjoined from doing and the reasons why."

With slight exception, the same may be said of the case at bar. Without further lengthening this opinion by reciting the evidence and the statements of the trial judge at the time he announced his decision in the presence of counsel

for all parties, I would simply state that this record does affirmatively show that no harm resulted from the failure of the judge to recite specifically in his order the reasons why he granted the temporary injunction. Certainly, it will not be argued that such omission probably caused the rendition of an improper judgment or probably prevented appellants from making a proper presentation of the case to this court. Rule 434, T.R.C.P.

Appellants and appellee are each asserting substantive rights under Federal law. Appellants say the film in question is protected under the United States Constitution, while appellee asserts that the exercise of its substantive right to regulate the exhibition of the film is within the bounds of that same Constitution. Yet, we are asked to reverse this case on a purely technical, procedural rule. This we are in effect prohibited from doing by the Supreme Court of the United States in Arnold v. Panhandle & Santa Fe Ry. Co., 353 U.S. 360, 77 S.Ct. 840, 1 L. Ed. 2d 889, wherein the court said that "* * * the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

Rule 683, T.R.C.P., under discussion here, is purely procedural and does not involve any substantive rights of the parties. It cannot be invoked to deny the parties, appellants and appellee, of their rights under the Constitution of the United States. For this additional reason the point is overruled.

I am fully persuaded that the temporary injunction was properly granted and that it is our duty to affirm.

BATEMAN, *Associate Justice*

APPENDIX B

United States Constitution

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which

the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Texas Constitution

Article I

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the

abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Texas Penal Code

Art. 527. 509 Acts involving obscene articles, objects and materials; fines and penalties; exemptions

Section 1. Whoever shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, televise, publish, or offer to publish, or have in his possession or under his control, or otherwise distribute, make, display, or exhibit any obscene book, magazine, story, pamphlet, paper, writing, card, advertisement; circular, print, pictures, photograph, motion picture film, image, cast, slide, figure, instrument, statue, drawing, phonograph record, mechanical recording, or presentation, or other article which is obscene, shall be fined not more than One Thousand Dollars ($1,000) nor imprisoned more than one (1) year in the county jail or both.

Section 2. Whoever shall knowingly offer for sale, sell, give away, exhibit, televise, or otherwise distribute, make, display, or exhibit any obscene book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, pictures, photograph, motion picture film, image, cast, slide, figure,

instrument, statue, drawing, phonograph record, mechanical recording, or presentation, or other article which is obscene to a minor shall be fined not more than Two Thousand, Five Hundred Dollars ($2,500) nor imprisoned in the county jail more than two (2) years or both.

Section 3. For purposes of this article the word "obscene" is defined as whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests. Provided, further, for the purpose of this article, the term "contemporary community standards" shall in no case involve a territory or geographic area less than the State of Texas.

Section 4. Whoever shall be convicted for the second time of a violation of this article shall be deemed guilty of a felony and shall be punished by confinement in the State penitentiary for not more than five (5) years or by a fine of not more than Ten Thousand Dollars ($10,000) or by both such fine and imprisonment.

Section 5. It shall be a defense to any charges brought hereunder if such prohibited matter or act shall be regularly in use in any bona fide, religious, educational or scientific institution or the subject of a bona fide scientific investigation.

The provisions of this Act shall not apply to any motion picture produced or manufactured as commercial motion pictures which (1) have the seal under the Production Code of the Motion Picture Association of America, Inc.; or (2) legally move in interstate commerce under Federal

Law; or (3) are legally imported from foreign countries into the United States and have been passed by a Customs Office of the United States Government at any port of entry.

The provisions of this Act shall not apply to any daily or weekly newspaper.

Section 6. The district courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon application by any district or county attorney within their respective jurisdictions, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out, and enforce the provisions of this Act. As amended Acts 1955, 54th Leg., p. 386, ch. 107, § 1; Acts 1957, 55th Leg., p. 425, ch. 203, § 1; Acts 1961, 57th Leg., p. 1041, ch. 461, § 1.

Dallas City Ordinance No. 11,284

An Ordinance Providing for the Amendment of Chapter 46 of the 1960 Revised Code of Civil and Criminal Ordinances of the City of Dallas by adding thereto a new chapter known as Chapter 46A; Providing for the establishment of a Motion Picture Classification Board; Outlining classification procedures; Defining Offenses relating to the exhibition of films classified "Not Suitable for Young Persons"; Providing for the issuance, revocation and suspension of licenses; Providing for judicial review; Defining public nuisances; Providing for injunctive relief; Providing for an exception to State law; Providing for a severability clause; Providing for a Penalty; Providing for the repeal of Ordinance No. 10963 enacted by the City Council on April 5, 1965, and enacting this ordinance in lieu thereof; and Declaring an Emergency.

WHEREAS, the City Council after investigation on the part of the members of said Council and the hearing of evidence and testimony at a public hearing called for that purpose, is of the opinion and finds that certain commercially produced motion picture films are one of the contributing causes to juvenile delinquency, sexually promiscuous behavior, and along with other factors, tend to incite criminal behavior on the part of young persons; and

WHEREAS, the City Council is of the opinion that legislative action should be taken by this Council for the purpose of classifying the movies to which said young persons of school age are admitted without proper supervision; and

WHEREAS, the City Council is of the opinion and finds that a great portion of said movies are available for screening and for showing more than thirty days prior to their initial exhibition and that the benefits to the public will far exceed the burden placed upon the motion picture industry by having said movies screened and classified; and

WHEREAS, the City Council is of the opinion and finds that motion picture films possess a greater capacity for good and for evil among young persons of school age than most other modes of expression and are, therefore, affected with a public interest; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Chapter 46 of the 1960 Revised Code of Civil and Criminal Ordinances of the City of Dallas, be, and is hereby amended by adding thereto a new chapter

known as Chapter 46A, consisting of Section 46A-1 through 46A-11 inclusive, which shall read as follows:

"CHAPTER 46A"

MOTION PICTURE CLASSIFICATION ORDINANCE

§ 46A-1 Definition of Terms
§ 46A-2 Establishment of Classification Board
§ 46A-3 Classification Procedure
§ 46A-4 Offenses
§ 46A-5 License
§ 46A-6 Revocation or suspension of license
§ 46A-7 Judicial Review
§ 46A-8 Public Nuisances
§ 46A-9 Injunctions
§ 46A-10 Exception to State Law
§ 46A-11 Severability Clause

Section 46A-1. *Definition of Terms:*

(a) "Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(b) "Exhibit" means to project a film at any motion picture theatre or other public place within the City of Dallas to which tickets are sold for admission.

(c) "Exhibitor" means any person, firm or corporation which exhibits a film.

(d) "Young person" means any person who has not attained his sixteenth birthday.

(e) "Board" means the Dallas Motion Picture Classification Board established by Section 46A-2 of this ordinance.

(f) "Not suitable for young persons" means:

(1) Describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the judgment of the Board, likely to incite or encourage crime or delinquency on the part of young persons; or

(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relation in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their pruient interest.

A film shall be considered 'likely to incite or encourage' crime delinquency or sexual promiscuity on the part of young persons, if, in the judgment of the Board, there is a substantial probability that it will create the impression on young persons that such conduct is profitable, desirable, acceptable, respectable, praiseworthy or commonly accepted. A film shall be considered as appealing to 'prurient interest' of young persons, if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire. In determining whether a film is 'not suitable for young persons', the Board shall consider the

films as a whole, rather than isolated portions, and shall determine whether its harmful effects outweigh artistic or educational values such film may have for young persons.

(g) 'Classify' means to determine whether a film is:

(1) Suitable for young persons, or;

(2) Not suitable for young persons.

(h) 'Advertisement' means any commercial promotional material initiated by an exhibitor designed to bring a film to public attention or to increase the sale of tickets to exhibitions of same, whether by newspaper, billboard, motion picture, television, radio, or other media within or originating within the City of Dallas.

(i) 'Initial exhibition' means the first exhibition of any film within the City of Dallas.

(j) 'Subsequent exhibition' means any exhibition subsequent to the initial exhibition, whether by the same or a different exhibitor.

(k) 'File' means to deliver to the City Secretary for safekeeping as a public record of the City of Dallas.

(l) 'Classification order' means any written determination by a majority of the Board classifying a film, or granting or refusing an application for change of classification.

(m) The term 'Board' as used and applied in subsection (a) of Section 46A-7 shall include the City of Dallas when attempting to enforce this ordinance and the City Attorney of the City of Dallas when representing the Board or the City of Dallas.

Section 46A-2. *Establishment of Board.*

There is hereby created a Board to be known as the Dallas Motion Picture Classification Board which shall be composed of a Chairman and Eight Members to be appointed by the Mayor and City Council of the City of Dallas, whose terms shall be the same as members of the City Council. Such members shall serve without pay and shall adopt such rules and regulations as they deem best governing their action, proceeding and deliberations and time and place of meeting. These rules and regulations shall be subject to approval of the City Council. If a vacancy occurs upon the Board by death, resignation or otherwise, the governing body of the City of Dallas shall appoint a member to fill such vacancy for the unexpired term.

The Chairman and all Members of the Board shall be good, moral, law-abiding citizens of the City of Dallas, and shall be chosen so far as reasonably practicable in such a manner that they will represent a cross section of the community. Insofar as practicable, the members appointed to the Board shall be persons educated and experienced in one or more of the following fields: art, drama, literature, philosophy, sociology, psychology, history, education, music, science or other related fields. The City Secretary shall act as Secretary of the Board.

Section 46A-3. *Classification Procedure:*

(a) Before any initial exhibition, the exhibitor shall file a proposed classification of the film to be exhibited, stating the title of the film and the name of the producer, and giving

a summary of the plot and such other information as the Board may by rule require, together with the classification proposed by the exhibitor. The Board shall examine such proposed classification, and if it approves same, shall mark it 'approved' and file it as its own classification order. If the Board fails to act, that is, either file a classification order or hold a hearing within five (5) days after such proposed classification is filed, the proposed classification shall be considered approved.

(b) If upon examination of the proposed classification a majority of the Board is not satisfied that it is proper, the Chairman shall direct the exhibitor to project the film before any five (5) or more members of the Board, at a suitably equipped place and at a specified time, which shall be the earliest time practicable with due regard to the availability of the film. The exhibitor, or his designated representative, may at such time make such statement to the Board in support of his proposed classification and present such testimony as he may desire. Within two (2) days, the Board shall make and file its classification of the film in question.

(c) Any initial or subsequent exhibitor may file an application for a change in the classification of any film previously classified. No exhibitor shall be allowed to file more than one (1) application for change of classification of the same film. Such application shall contain a sworn statement of the grounds upon which the application is based. Upon filing of such application, the City Secretary shall bring it immediately to the attention of the Chairman of the Board who upon application by the exhibitor shall set a time and place

for a hearing and shall notify the applicants and all interested parties, including all exhibitors who may be exhibiting or preparing to exhibit the film. The Board shall view the film and at such hearing, hear the statements of all interested parties, and any proper testimony that may be offered, and shall within two (2) days thereafter make and file its order approving or changing such classification. If the classification of a film is changed as a result of such hearing to the classification 'not suitable for young persons', the exhibitors showing the film shall have seven (7) days in which to alter their advertising and audience policy to comply with such classification.

(d) Upon filing by the Board of any classification order, the City Secretary shall immediately issue and mail a notice of classification to the exhibitor involved and to any other exhibitor who shall request such notice.

(e) A classification shall be binding on any subsequent exhibitor unless and until he obtains a change of classification in the manner above provided.

Section 46A-4. *Offenses:*

(a) It shall be unlawful for any exhibitor or his employee:

(1) To exhibit any film which has not been classified as provided in this ordinance.

(2) To exhibit any film classified 'not suitable for young persons' if any current advertisement of such film by such exhibitor fails to state clearly the classification of such film.

(3) To exhibit any film classified 'not suitable for young persons' without keeping such classification

posted prominently in front of the theatre in which such film is being exhibited.

(4) Knowingly to sell or give to any young person a ticket to any film classified 'not suitable for young persons'.

(5) Knowingly to permit any young person to view the exhibition of any film classified 'not suitable for young persons'.

(6) To exhibit any film classified 'not suitable for young persons' or any scene or scenes from such a film, or from an unclassified film, whether moving or still, in the same theatre and on the same program with a film classified 'suitable for young persons'; provided that any advertising preview or trailer containing a scene or scenes from an unclassified film or a film classified 'not suitable for young persons' may be shown at any time if same has been separately classified as 'suitable for young persons' under the provisions of Section 46A-3 of this ordinance.

(7) To make any false or willfully misleading statement in any proposed classification, application for change of classification, or any other proceeding before the Board.

(8) To exhibit any film classified 'not suitable for young persons' without having in force the license hereinafter provided.

(b) It shall be unlawful for any young person:

(1) To give his age falsely as sixteen (16) years of age or over, for the purpose of gaining admittance to an exhibition of a film classified 'not suitable for young persons'.

(2) To enter or remain in the viewing room of any theatre where a film classified 'not suitable for young persons' is being exhibited.

(3) To state falsely that he or she is married for the purpose of gaining admittance to an exhibition of a film classified 'not suitable for young persons'.

(c) It shall be unlawful for any person:

(1) To sell or give any young person a ticket to an exhibition of a film classified 'not suitable for young persons'.

(2) To make any false or willfully misleading statement in an application for change of classification or in any proceeding before the Board.

(3) To make any false statements for the purpose of enabling any young person to gain admittance to the exhibition of a film classified as 'not suitable for young persons'.

(d) To the extent that any prosecution or other proceeding under this ordinance, involves the entering, purchasing of a ticket, or viewing by a young person of a film classified 'not suitable for young persons', it shall be a valid defense that such young person was accompanied by his parent or legally appointed guardian, husband or wife, throughout the viewing of such film.

Section 46A-5. *License*:

Every exhibitor holding a motion picture theatre or motion picture show license issued pursuant to Chapter 46 of the 1960 Revised Code of Civil and Criminal Ordinances of the City of Dallas shall be entitled to issuance of a license by the City Secretary to exhibit films classified 'not suitable for young persons'.

Section 46A-6. *Revocation or suspension of license:*

Whenever the City Attorney or any person acting under his direction, or any ten (10) citizens of the City of Dallas, shall file a sworn complaint with the City Secretary stating that any exhibitor has repeatedly violated the provisions of this ordinance, or that any exhibitor has persistently failed to use reasonable diligence to determine whether those seeking admittance to the exhibition of a film classified 'not suitable for young persons' are below the age of sixteen (16), the City Secretary shall immediately bring such complaint to the attention of the City Council who shall set a time and place for hearing such complaint and cause notice of such hearing to be given to the complainants and to the exhibitor involved. The City Council shall have authority to issue subpoenas requiring witnesses to appear and testify at such hearing, and any party to such hearing shall be entitled to such process. If, after hearing the evidence, the City Council shall find the charges in such complaint to be true, it shall issue and file and order revoking or suspending the license above provided, insofar as it grants the privilege of showing such classified pictures, for a specific period not to exceed one (1) year, or may issue a reprimand it it is satisfied that such violation will not continue.

The City Council likewise, after notice and hearing, may revoke or suspend the license of any exhibitor who has refused or unreasonably failed to produce or delayed the submission of a film for review, when requested by the Board.

Section 46A-7. *Judicial Review:*

(a) Within two (2) days after the filing of any classification by the Board, other than an order approving the classification proposed by an exhibitor, any exhibitor may file a notice of non-acceptance of the Board's classification, stating his intention to exhibit the film in question under a different classification. Thereupon it shall be the duty of the Board to do the following:

(1) Within three (3) days thereafter to make application to a District Court of Dallas County, Texas, for a temporary and a permanent injunction to enjoin such defendant-exhibitor, being the exhibitor who contests the classification, from exhibiting the film in question contrary to the provisions of this ordinance.

(2) To have said application for temporary injunction set for hearing within five (5) days after the filing thereof. In the event the defendant-exhibitor appears at or before the time of the hearing of such temporary injunction, waives the notice otherwise provided by the Texas Rules of Civil Procedure, and requests that at the time set for such hearing the Court proceed to hear the case under the Texas Rules of Civil Procedure for permanent injunction on its merits, the Board shall be required to waive its application for temporary injunction and shall join in such request. In the event the defendant-exhibitor does not waive notice and/or does not request an early hearing on the Board's application for permanent injunction, it shall nevertheless be the duty of the board to obtain the earliest possible setting for such hearing under the provisions of State law and the Texas Rules of Civil Procedure.

(3) If the injunction is granted by the trial court and the defendant-exhibitor appeals to the Court of

Civil Appeals, the Board shall waive any and all statutory notices and times as provided for in the Texas State Statutes and Texas Rules of Civil Procedure, and shall within five (5) days after receiving a copy of appealing exhibitor's brief, file its reply brief, if required, and be prepared to submit the case upon oral submission or take any other reasonable action requested by the appealing exhibitor to expedite the submission of the case to the Court of Civil Appeals, and shall upon request of the appealing exhibitor, jointly with such exhibitor, request the Court of Civil Appeals to advance the cause upon the docket and to give it a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(4) If the Court of Civil Appeals should by its judgment affirm the judgment of the trial court granting the injunction and the appealing exhibitor should file an application for writ of error to the Texas Supreme Court, the Board shall be required to waive any and all notices and times as provided for in the Texas State Statutes and the Texas Rules of Civil Procedure, and shall within five (5) days after receiving a copy of the application for writ of error, file its reply brief, if required, and be prepared to submit the case upon oral submission or take any other reasonable action requested by the appealing exhibitor to expedite the submission of the case to the Supreme Court and shall upon request of the appealing exhibitor, jointly with such exhibitor, request the Supreme Court to advance the cause upon the docket and to give it a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(5) If the District Court denies the Board's application for injunction, and the Board elects to appeal, the Board shall be required to waive all periods of time allowed it by the Texas Rules of Civil Procedure and if a motion for a new trial is required, shall file said mo-

tion within two (2) days after the signing of the judgment, (or on the following Monday if said period ends on a Saturday or Sunday, or on the day following if the period ends on a Legal Holiday), shall not amend said motion and shall obtain a hearing on such motion within five (5) days time. If no motion for new trial is required as a prerequisite to an appeal under the Texas Rules of Civil Procedure, the Board shall not file such a motion. Within ten (10) days after the judgment is signed by the District Court denying such injunction or within ten (10) days after the order overruling the Board's motion for new trial is signed, if such motion is required, the Board shall complete all steps necesary for the perfection of its appeal to the Court of Civil Appeals, including the filing of the Transcript, Statement of Facts and Appellant's brief. Failure to do so shall constitute an abandonment of the appeal. On filing the record with the Court of Civil Appeals, the Board shall file a motion to advance requesting the Court to give a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(6) If the Court of Civil Appeals reverses the trial court after the trial court has granted an injunction, or if the Court of Civil Appeals refuses to reverse the trial court after that court has failed to grant an injunction, then if the Board desires to appeal from the decision of the Court of Civil Appeals by writ of error to the Supreme Court of the State of Texas, it must file its motion for rehearing within two (2) days of rendition of the decision of the Court of Civil Appeals (or on the following Monday, if said period ends on a Saturday or Sunday, or on the day following if the period ends on a Legal Holiday), and shall file its application for writ of error within ten (10) days after the Court of Civil Appeals' order overruling such motion for rehearing, and failure to do so shall waive all rights to appeal from the decision of the Court of Civil Appeals. At the time of filing the application for writ of error,

the Board shall also request the Supreme Court to give the case a preferential setting and advance the same on the docket.

(b) The filing of such notice of non-acceptance shall not suspend or set aside the Board's order, but such order shall be suspended at the end of ten (10) days after the filing of such notice unless an injunction is issued within such period.

(c) Failure of any exhibitor to file the notice of non-acceptance within two (2) days as required in Subdivision (1) of this Section 46A-7, shall constitute acceptance of such classification order and such exhibitor shall be bound by such order in all subsequent proceedings except such proceedings as may be had in connection with any application for change of classification under Subdivision (c) of Section 46A-3 above.

Section 46A-8. *Public Nuisances:*

The following acts are declared to be public nuisances:

(a) Any violation of Subdivisions (1), (2), (3), or (6), of Subdivision (a) of Section 46A-4 of this ordinance.

(b) Any exhibition of a film classified as 'not suitable for young persons' at which more than three (3) young persons are admitted.

(c) Any exhibition of a film classified as 'not suitable for young persons' by an exhibitor who fails to use reasonable diligence to determine whether persons admitted to such exhibition are persons under the age of sixteen (16) years.

(d) Any exhibition of a film classified as 'not suitable for young persons' by an exhibitor who has been convicted of as many as three (3) violations of Subdivisions (4) or (5) of Subdivision (a) of Section 46A-4 of this ordinance in connection with the exhibition of the same film.

Section 46A-9. *Injunctions:*

Whenever the Board has probable cause to believe that any exhibitor has committed any of the acts declared in Section 46A-8 above to be a public nuisance, the Board shall have the duty to make application to a court of competent jurisdiction for an injunction restraining the commission of such acts.

Section 46A-10. *Exemption to State Law:*

Nothing in this ordinance shall be construed to regulate public exhibitions pre-empted by Article 527 of the Penal Code of the State of Texas, as amended.

Section 46A-11. *Severability Clause:*

Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance, and the same are deemed severable for this purpose."

SECTION 2. That any person who shall violate any provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed Two Hundred Dollars ($200.00) and each offense shall

be deemed to be a separate violation and punishable as a separate offense, and each day that a film is exhibited which has not been classified according to this ordinance shall be a separate offense.

SECTION 3. That Ordinance No. 10963 heretofore enacted by the City Council of the City of Dallas on April 5, 1965, be and the same is hereby in all things repealed and held for naught, and this ordinance is enacted in lieu thereof.

SECTION 4. The fact that Ordinance No. 10963 previously passed by the City Council of the City of Dallas has been declared to be unenforceable in the Courts by the Federal District Court, creates an urgency and an emergency in the preservation of the public peace, comfort and general welfare and requires that this ordinance shall take effect immediately from and after its passage, and it is accordingly so ordained.

APPENDIX C

Chronology Table for Appendix

All Dates Are 1966

No.	Date	Event	Appendix
1.	Jan. 24	Interstate's Application to Classify "Viva Maria" as "suitable for young persons".	
2.	Jan. 25	Classification Board voted to screen picture.	
3.	Feb. 9	Board classified picture "not suitable for young persons".	
4.	Feb. 11	Exhibitor gave notice of non-acceptance.	
5.	Feb. 14	City filed Plaintiff's Original Petition.	C
6.	Feb. 17	Interstate's Answer filed.	C
7.	Feb. 17	Temporary Injunction hearing began.	
8.	Feb. 17	"Viva Maria" opened at Esquire Theatre.	
9.	Feb. 18	Temporary Injunction entered	C
10.	Feb. 21	Motion to Send Original Exhibits	C
11.	Feb. 21	Interstate's Request of Record and Statement of Facts.	
12.	Feb. 25	Transcript filed.	
13.	Mar. 19*	Interstate's brief filed in Court of Civil Appeals.	
14.	Mar. 24*	City's brief filed.	
15.	Mar. 24	Motion to Advance case and to exhibit picture filed.	

*Briefs not included.

Chronology Table for Appendix
All Dates Are 1966

No.	Date	Event	Appendix
16.	Mar. 24	Motion to Advance granted.	C
17.	Mar. 24	Order to Show Film	C
18.	April 5	Judgment of the Court of Civil Appeals	C
19.	April 5	Opinion of the Court of Civil Appeals	A
20.	April 6	Interstate's Motion for Rehearing filed	C
21.	April 7	City's Reply	
22.	April 20	United Artists Motion for Rehearing	
23.	April 22	City's Reply	
24.	April 25	Appellants' Motion for Rehearing Overruled	C
25.	May 19	Interstate's Petition for Writ of Error	C
26.	May 23	Stipulations between Interstate, United Artists, and City agreeing that City could mail reply to Petition for Writ of Error by May 31. This was done to relieve a conflict arising by virtue of a companion case between the same parties set before the United States Court of Appeals on May 23.	
27.	May 23	Interstate's Application for Writ of Error filed in Supreme Court of Texas	C
28.	May 31	City's Reply mailed	

Chronology Table for Appendix

All Dates Are 1966

No.	Date	Event	Appendix
29.	June 6	Joint Motion to Advance filed.	C
30.	July 27	Texas Supreme Court refuses Writ of Error, n.r.e.	C
31.	Aug. 10	Interstate's Motion for Rehearing filed	C
32.	Aug. 18	City's Reply	
33.	Sept. 30	Interstate's Supplemental Motion for Rehearing	C
34.	Oct. 4	City's Reply	
35.	Oct. 19	Texas Supreme Court overruled Motion for Rehearing	C
36.	Jan. 11, 1967	Notice of Appeal to Supreme Court of United States	C

The above Chronology Table has been prepared by appellant Interstate and approved by the City of Dallas, and is tendered herein to assist in clarifying the time sequence involved in the proceeding.

C-4

Plaintiff's Original Petition

To the Honorable Judge of Said Court:

COMES NOW, the CITY OF DALLAS, a municipal corporation, incorporated under the laws of the State of Texas, complaining of INTERSTATE CIRCUIT, INC., a Delaware corporation, Defendant, and for cause of action would respectfully show the Court:

I.

The CITY OF DALLAS, a municipal corporation, organized under and by virtue of the laws of the State of Texas, is located in Dallas County, Texas, and the Defendant, INTERSTATE CIRCUIT, INC. is a Delaware Corporation with a permit to do business in the State of Texas, with RAYMOND WILLIE, Vice-President and General Manager, Majestic Building, Dallas, Texas, being the agent of said corporation upon whom service of process may be had.

II.

On November 22, 1965, the City Council of the City of Dallas enacted Ordinance No. 11284, known as the City of Dallas Motion Picture Classification Ordinance; Providing for the establishment of a Motion Picture Classification Board, outlining classification procedures, defining offenses related to the exhibition of films "not suitable for young persons"; Providing for the issuance, revocation and suspension of licenses; Providing for judicial review and providing for injunctive relief and defining the term "not suitable for

young persons", a copy of said ordinance being attached hereto and being made a part hereof as Exhibit "A" as though fully written herein word for word.

III.

Plaintiff would further show the Court in this connection that pursuant to said ordinance, the City Council of the City of Dallas appointed a chairman and eight (8) members of the Motion Picture Classification Board, and pursuant to Ordinance No. 11284, and that Ordinance No. 11298 was enacted by the City Council of the City of Dallas on December 6, 1965, which amended Ordinance No. 11284, and pursuant thereto the City Council appointed three (3) alternate members of said Board. A copy of said Ordinance being attached hereto as Exhibit "B" as though fully written herein word for word.

Plaintiff would further show the Court that the above film was classified based upon the standard contained in Subsection (f) of Section 46A-1 of said Ordinance, which read as follows:

> "(f) 'Not suitable for young persons' means:
>
> "(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relations in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest."

IV.

Plaintiff would further show the Court that pursuant to Ordinance No. 11284 which requires such action on behalf

of such Motion Picture exhibitor, the Defendant, INTERSTATE CIRCUIT, INC. submitted the film "Viva Maria" to the Motion Picture Classification Board by letter dated January 24, 1966, and Defendant notified said Classification Board that it proposed to classify the film "Viva Maria" to be exhibited at the Esquire Theatre, Dallas, Texas, as "suitable for young persons", and that the Classification Board met on January 25, 1966, and requested a screening of said movie as provided in Ordinance No. 11284, and that said picture was made available to the Motion Picture Classification Board on Monday, February 7, 1966, and that after viewing said film, the Board classified it as being "not suitable for young persons" based upon the standard contained in Subparagraph 2 of Paragraph 4 of Section 46A-1 of Ordinance No. 11284 by protraying sexual promiscuity in such a manner as to be in the judgment of the Board likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to the prurient interests.

That the Board filed such classification with the City Secretary of the City of Dallas as provided in said Ordinance, and the City Secretary, as Secretary of the Motion Picture Classification Board, notified the Defendant INTERSTATE CIRCUIT, INC. by letter dated February 9, 1966, and that by letter dated February 11, 1966, Defendant notified the Classification Board of the non-acceptance of such classification, and that it intended to exhibit the film "Viva Maria" at the Esquire Theatre under the classification of "suitable for young persons".

V.

The Plaintiff would further show the Court that on Sunday, February 13, 1966, the Defendant inserted an advertisement in the Dallas Morning News, Dallas, Texas, stating that the film involved herein would be shown at the above named theatre without carrying the notation as required by Ordinance No. 11284, "not suitable for young persons", and that on said date, to-wit: February 17, 1966, the film involved is scheduled to be exhibited at the Esquire Theatre, Dallas, Texas, without carrying the notation "Not suitable for young persons" as provided by Ordinance No. 11284 as was classified by the Dallas Motion Picture Classification Board.

VI.

Plaintiff would further show the Court that the film "Viva Maria" will be exhibited by Defendant INTERSTATE CIRCUIT, INC. at the Esquire Theatre in Dallas, Texas, in violation of Ordinance No. 11284 of the City of Dallas as amended unless Defendant is enjoined, and said Defendant will exhibit said film to the general public, including young persons under the age of sixteen (16) years, in violation of Ordinance No. 11284, without advertising said film as being "not suitable for young persons", and that this matter should be set for hearing before the Court on Plaintiff's application for a temporary and permanent injunction, as provided in Ordinance No. 11284.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein,

and that this cause be set for a hearing within five (5) days on its application for a temporary injunction, and that if Defendant will agree, that this cause be heard on its application for a permanent injunction, and that upon a final hearing, said Defendant be adjoined from violating Ordinance No. 11284 as set out above; and that all costs be adjudged against Defendant herein, and for such other and further relief to which Plaintiff may be entitled.

FIAT

On this the 14th day of February, 1966, came on for consideration the sworn Petition of Plaintiff, CITY OF DALLAS, wherein the CITY OF DALLAS is seeking a temporary and permanent injunction against INTERSTATE CIRCUIT, INC., and Plaintiff requests that the cause be set for hearing,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff's application for a temporary and permanent injunction be set for a hearing on the 17 day of February 1966, at 9 o'clock, a.m., and it appearing to the Court that the firm of Tobolowsky, Hartt, Schlinger & Blalock, Attorneys for Defendant, have agreed to waive service of process and to accept service of process; there shall be no service of process by the District Clerk.

Defendant's Original Answer

To the Honorable Judge of Said Court:

Now comes INTERSTATE CIRCUIT, INC., Defendant herein, and files this its original answer to the Plaintiff's

Petition, and for such answer would respectfully show unto the Court the Following: * * *

II.

The Defendant excepts to Plaintiff's Petition in its entirety for the following reasons: * * *

3. The Petition does not allege that in truth and in fact, the motion picture "Viva Maria", portrays sexual promiscuity in such a manner as to incite or encourage delinquency or sexual promiscuity on the part of young persons, or to appeal to their prurient interests. This exception goes to the Petition as a whole, and particularly to the last unnumbered paragraph of Paragraph III, and to the first paragraph of Paragraph IV of Plaintiff's Petition. * * *

VI.

Answering herein affirmatively, the Defendant would show that Ordinance No. 11284 is unconstitutional and violates the rights of this Defendant under the First and Fourteenth Amendments of the Constitution of the United States, and also under the provisions of Article 1, Section 8, of the Constitution of the State of Texas, for the following reasons:

(1) The Ordinance as a whole establishes a form of prior restraint and censorship of communication. The procedures established by it require that the Board classify pictures as "not suitable for young persons" and sets forth a definition of this term in Section 46A-1(f) of Ordinance No. 11284. (In order to avoid encumbering the record with duplication of pleadings, all references to the Ordinance, unless other-

wise stated, will be to Ordinance No. 11284, a copy of which is found in the Plaintiff's Petition, and a copy will be introduced by this Defendant at the time of trial if the same is not done by the Plaintiff as a part of its case.)

(2) The provisions of the Ordinance purporting to define "not suitable for young persons" are vague and indefinite. This definition found in Section 46A-1(f) does not provide any objective standard for the use by members of the Board, but to the contrary, directs the Board to classify a picture as "not suitable for young persons" if, in the judgment of the Board, the picture is likely to incite crime, delinquency, or sexual promiscuity by young persons or to appeal to their prurient interests. Without legally recognized standards which can be determined and applied objectively, the classification of films under the Ordinance will violate plaintiff's rights under the First Amendment.

(3) Prompt judicial determination of any action by the Plaintiff in classifying a motion picture as "not suitable for young persons", must be assured to the Defendant. This provision for prompt judicial determination must be guaranteed by statute or by a final court decision. Neither statutes of the State of Texas, the Texas Rules of Civil Procedure, and the Rules of Practice in Civil Cases in the District Courts of Dallas County provide for prompt judicial determination. The proceedings for a temporary injunction are given certain preferences by statutes, and by Texas Rules of Civil Procedure, but do not give a determination of the Plaintiff's rights since the purpose of the temporary injunction is to preserve the status quo, and such a writ will issue for that

purpose on the showing of a "probable right" and a "probable injury" without sufficient proof to establish a preponderance of the evidence. The trial for a permanent injunction is given no preferential treatment by either rules or statutes. Neither a temporary injunction nor a permanent injunction proceeding provides a prompt judicial determination of the Plaintiff's right to restrict the exhibition of commercial motion pictures licensed for showing in the Defendant's theatres.

Section 7, entitled "Judicial Review", is a concession by the Plaintiff to waive many rights which it would have for the preparation of a case according to standards established by the Texas statutes and Rules of Civil Procedure. The agreement of Plaintiff to waive its rights as found in this section does not provide assurance of prompt judicial review by statute or by court decision. The Plaintiff does not have the power or authority to change either the Texas statutes or the Texas Rules of Civil Procedure, and the attempt by it to establish a system of censorship or classification without providing for prompt review violates the Defendant's rights under the First Amendment. Besides the absence of a statute or court decision assuring prompt judicial review the Plaintiff's action in classifying a picture, the Ordinance is defective because the Plaintiff does not have the right to tell any one of the trial or appellate courts which may hear a case of this nature how to set its docket and to control the actual trial procedures. The Plaintiff's professed cooperation and willingness to assure a speedy trial insofar as its rights are concerned does not provide the essential guarantee that there will be a speedy trial. * * *

(7) Obscenity is the only valid ground for restricting or prohibiting the classification of a commercial motion picture under the amendments to the United States Constitution. Ordinance No. 11284 is an attempt to classify commercial motion pictures based upon their possible effect upon young persons as a special group or class. This is contrary to the constitutional provisions mentioned above and the laws of Texas. This pronouncement regarding the constitutional provisions was made prior to the amendment of Article 527 which exempted commercial motion pictures from obscenity prosecutions as mentioned in the following paragraph. The constitutional provisions alone have been construed to prohibit a classification system such as the Plaintiff seeks to enforce by Ordinance No. 11284.

VII.

The provisions of Ordinance No. 11284 violate the Texas Constitution and the state law in the following particulars:

(1) Article 527 of the Penal Code prohibits distribution of obscene material to minors. The exact language is as follows:

> "Sec. 2. Whoever shall knowingly offer for sale, sell, give away, exhibit, televise, or otherwise distribute, make, display, or exhibit any obscene book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, pictures, photograph, motion picture film, image, cast, slide, figure, instrument, statue, drawing, phonograph record, mechanical recording, or presentation, or other article which is obscene, *to a minor*, shall be fined not more than Two Thousand Five Hundred Dollars ($2,500) nor imprisoned in the county jail more than two (2) years or both". (Emphasis added.)

This statute preempts the field of distribution of obscene material to minors. The Plaintiff, as a home rule city, cannot legislate in violation and contradiction of the state statute which controls this subject. Only obscene material is denied the protection of the First Amendment of the Constitution of the United States according to repeated decisions of the Supreme Court of the United States; Article I, Section 8, of the Texas Constitution, gives a similar protection and has been so construed by Texas courts; Article 527 of the Penal Code was amended in 1961 to incorporate the Supreme Court's definition of obscenity and to provide the regulation set forth in that statute. * * *

CROSS-ACTION

XII.

The Defendant, Interstate Circuit, Inc., coming now as a Cross-Plaintiff, would show that parties are correctly identified in that Cross-Defendant is a municipal corporation with a home rule charter, and that it, Cross-Plaintiff, is a Delaware corporation doing business in Texas, operating commercial motion picture theatres in that City and elsewhere.

Cross-Plaintiff further adopts the allegations contained in Paragraphs No. VI through XI inclusive as a part of its cross-action. * * *

XIV.

The failure to get a prompt judicial determination of the validity of its classification ordinance as applied to this pic-

ture makes the ordinance unconstitutional to the specific fact application here as well as in the general situations outlined above.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that: ***

(2) That the injunction, both temporary and permanent, be denied the Plaintiff, and that the Plaintiff take nothing by its suit;

(3) That Ordinance No. 11284 of the City of Dallas be declared uunconstitutional in general, and in its particular application herein;

(4) Defendant, as Cross-Plaintiff, prays that Ordinance No. 11284 be declared unconstitutional and that the City of Dallas be permanently enjoined from enforcing the same and attempting to classify and censor commercial motion pictures exhibited by this Cross-Plaintiff;

Statement of Facts

Temporary Injunction

JOHN GILLILAND,

after having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. BICKLEY

* * * * *

Q. What connection do you have with the Motion Picture Classification Board of the City of Dallas?

A. I am a member of the board, appointed by the City Council.

Q. And are you vice-chairman of that board?

A. Yes, sir. * * *

CROSS EXAMINATION BY MR. HARTT

* * * * *

Q. As a matter of fact, back to your own opinion from viewing that picture, you do not consider it to encourage or incite crime or delinquency on the part of young persons, do you?

A. Well, I think the ordinance talks about the judgment of the board, if the movie tends to do these things. The board has to rule on this basis. Now, if you are asking me personally,—

Q. Yes, sir.

A. —I think, as far as the violence portion goes, when the clergy got tangled up in it really was the only thing, as far as violence goes. That was not very good as far as I was concerned because it really in a sense okayed violence because the clergy really was the perpetrators of the violence. In that sense I think it falls under that portion. At least that was my opinion.

Q. Wouldn't it be fair to say that that portion was considered by you to be sacrilegious?

A. I don't think of it in that sense myself, but I am sure that entered into it.

Q. You are sure that entered into it. Thank you. This picture had a lot of what could be called spoofing or poking fun, didn't it? * * *

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Q. You are sure that entered into it. Thank you. This picture had a lot of what could be called spoofing or poking fun, didn't it? * * *

JAMES ROBERT MACEO,

after having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. MACMASTER

Q. Will you please state your name to the Court?

A. James Robert Maceo.

Q. Are you a member of the clergy?

A. Yes, I am.

Q. What religion?

A. The Episcopal Church.

Q. Are you a pastor of the Episcopal Church in Dallas?

A. I am rector of Saint Paul's Episcopal Church.

Q. Where is that located?

A. 1302 West Keist Boulevard. * * *

Q. Are you a member of the City of Dallas Motion Picture Classification Board?

A. Yes, I am.

Q. And you were appointed by the City Council of the City of Dallas?

A. Correct. * * *

CROSS EXAMINATION BY MR. HARTT

* * * * * *

Q. And what do you mean "our community"?

A. The City of Dallas.

Q. And when you and the other board members were discussing "Viva Maria" and speaking in terms of the contemporary standards of the community, you and the board members were speaking of the Dallas community, were you not?

A. I was, and as far as our discussion goes, it was in terms of the teen-agers or young people we know.

Q. And if I were to ask you what the community was that you were considering in the context of the ordinance, you would say you were considering the Dallas community?

A. That is my experience.

Q. And that is the only community you were considering?

A. Yes.

Q. Now, the clergy in this particular picture came out, as the expression goes, they were the ones in the black hats, is that not right?

A. Yes.

Q. They were the baddies?

A. Yes.

Q. Now, someone viewing that picture, do you think it would create the impression on a ten or twelve year old boy or girl that the clergy was bad and evil?

A. Perhaps. I felt it was a mockery. They were bad but they were something to be laughed at.

Q. The clergy were something to be laughed at?

A. There was this mixture in there in which it was hard to determine.

Q. And that was equally true of the bombings, it was a mockery?

A. I didn't get that feeling because there was no sympathy created. I felt no sympathy before going to the movie for oppressors of the poor; I feel no empathy for this characterization. On the other hand, the presumed empathy for the clergy was there, and so I think of the two things, mockery doesn't come to my mind as a word with reference to the other situation.

Q. Now, as I understand, there was some discussion or some feeling amongst the board in their deliberations of "Viva Maria" that it was sacrilegious. Do you recall any such discussion?

A. I recall hearing that word, yes.

Q. And the sacrilegious aspect of it entered into it as far as the board's discussions were concerned?

A. I don't remember.

Q. Do you consider in your opinion the picture to have been sacrilegious?

A. I think my witness would have to be in terms of what I have already made because it is so broad an understanding of what sacrilege is as such. The word mockery is the one I used and one which I feel represents my impression of it. Sacrilegious, I am hard pressed to say. * * *

THE COURT: Oh, I realize you gentlemen might be right. There are two or three features in this picture that look to me would be unsuitable to young people. Actually, they have

tried to track that Friedman [sic] case, looks like, in this ordinance, and if any ordinance can be passed, why, it looks like they have taken every ground to pass one, if one can be valid, that is, valid. So I enjoin the exhibitor, its agents, servants, attorneys and employees from exhibiting it. I guess it is like a book by Mark Twain where he had a vaudeville show and was making no money, the owners of it. Then he had a man to get nude and painted him in striped paint, charged a dollar, which was unheard of in those days, limited it to men only and said, "If this doesn't get the money, I don't know Arkansas," and they did quite well. I sustain the City's position, find it okay, and enjoin them. * * *

Temporary Injunction

On this the 17th day of February A. D. 1966, came on to be heard the above entitled and numbered cause wherein the City of Dallas, as Plaintiff, seeks a temporary injunction against the Interstate Circuit, Inc., as Defendant, and United Artists Corporation, as Intervenor, have subjected itself to the jurisdiction of this Court, all parties having been represented by attorneys and in person, and having announced ready for trial, the Court proceeded to examine the pleadings, hear testimony and the argument of counsel, and after having fully considered the same, together with the viewing in person of the motion picture "Viva Maria", is of the opinion and hereby finds that the City of Dallas, as Plaintiff, is entitled to a temporary injunction.

It is therefore the ORDER, JUDGMENT and DECREE of this Court, and the Court hereby grants a temporary in-

junction against Interstate Circuit, Inc., as Defendant, and United Artists Corporation, as Intervenor, enjoining them from exhibiting said motion picture "Viva Maria" in violation of Ordinance No. 11284, or without advertising said film by media originating within or stationary within the City of Dallas as "not suitable for young persons", and that this temporary injunction shall be effective pending a final hearing for a permanent injunction herein.

The Exceptions of the Defendant and Intervenor in the pleadings are hereby specifically overruled.

The Defendant in open court, requested the Court to file its Findings of Fact and Conclusions of Law and this request is specifically denied.

The Defendant and Intervenor in open court gave notice of appeal *to the Fifth Supreme Judicial District of Texas Sitting at Dallas, Texas.*

Entered this the 18th day of February A. D. 1966.

/s/ A. R. Stout

JUDGE PRESIDING

Motion to Send Original Exhibits as Part of Record to Court of Civil Appeals

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant, Interstate Circuit, Inc., and moves the Court to order the original exhibits received herein as a part of the record to be sent to the Court of Civil Appeals for the use by that Court. As grounds for this motion De-

fendant would show that it would be prohibitively expensive to have copies of the exhibits made, would unnecessarily delay the prosecution of the appeal, and would work a hardship on all parties.

WHEREFORE, premises considered, Defendant prays that the original exhibits herein each be sent to the Court of Civil Appeals or in lieu thereof by agreement of the parties, the Clerk shall be furnished a true copy of such exhibits as, for their own purposes, the parties may wish to keep.

WHEREFORE, premises considered, Defendant prays that this Motion be granted.

Order Advancing Case

Thursday, March 24, 1966

This day came to be heard the motion of appellants to advance submission of this cause, and the same being inspected, it is considered, adjudged and ordered that the motion be granted and oral argument is set for Monday, March 28, 1966.

Order to Show Film

Thursday, March 24, 1966

This day came on to be heard the motion of appellants for permission to exhibit the motion picture, "Viva Maria", involved in this cause, and the same being inspected, it is considered, adjudged and ordered that the motion be granted, and that the motion picture in question be shown at 9:00 o'clock a.m., Monday, March 28, 1966.

Opinion of Court of Civil Appeals
Printed as Appendix A

Motion for Rehearing

TO SAID HONORABLE COURT:

Now comes INTERSTATE CIRCUIT, INC., one of the Appellants in the above entitled and numbered cause, and respectfully moves the Court to set aside the judgment of this Court, rendered on April 5, 1966, affirming the judgment of the trial court, and to grant this Appellant a rehearing, and to reverse the judgment of the trial court, as prayed for in the brief on file herein, and as grounds for this motion would respectfully show the following:

I.

The Court of Civil Appeals erred in overruling Appellant's first point, reading as follows:

> The error of the Court in refusing to hold that Ordinance No. 11284 is unconstitutional because it restricts free communication in violation of the First and Fourteenth Amendments of the Constitution of the United States.

II.

The Court of Civil Appeals erred in overruling Appellant's second point, reading as follows:

> The error of the Court in refusing to hold that Ordinance No. 11284 is unconstitutional because it restricts free communication in violation of Article 1, Section 8, of the Constitution of the State of Texas.

III.

The Court of Civil Appeals erred in overruling Appellant's third point, reading as follows:

> The error of the Court in refusing to hold that Ordinance 11284 is unconstitutional because the standards of classification in Section 46A-1(f) are vague and without legal meaning for censorship.

IV.

The Court of Civil Appeals erred in overruling Appellant's fourth point, reading as follows:

> The Court erred in sustaining the classification of "Viva Maria" as "not suitable for young persons". Appellee's testimony showed that this classification was made upon the basis that it was "sacreligious".

V.

The Court of Civil Appeals erred in overruling Appellant's fifth point, reading as follows:

> The Court erred in sustaining the classification of "Viva Maria" as "not suitable for young persons". Appellee's testimony showed that the community standard involved a geographic area of the City of Dallas only, and not of the State of Texas or the United States.

VI.

The Court of Civil Appeals erred in overruling Appellant's sixth point, reading as follows:

> The Court erred in finding that "Viva Maria" was "not suitable for young persons" in that the Court's judg-

ment was based upon a few isolated scenes taken from the entire picture and not on its dominant theme as a whole.

VII.

The Court of Civil Appeals erred in overruling Appellant's seventh point, reading as follows:

> The error of the Court in refusing to hold that Article 527 of the Texas Penal Code preempted the field of regulating motion pictures action by any municipality such as the City of Dallas.

VIII.

The Court of Civil Appeals erred in overruling Appellant's eighth point, reading as follows:

> The Court erred in overruling Appellant's exception II (1), in which it pointed out that the petition did not allege that the Appellee had no adequate remedy at law.

* * * * *

XIX.

The Court of Civil Appeals erred in overruling Appellant's nineteenth point, reading as follows:

> The error of the Court in misapplying the law in the foregoing eighteen points is an abuse of discretion in each instance.

Orders Overruling Motion for Rehearing

Monday, April 25, 1966

This day came on to be heard the motion of appellant Interstate Circuit, Incorporated, for rehearing of this cause, and the same being inspected, it is considered, adjudged and ordered that the motion be overruled.

This day came on to be heard the motion of appellant United Artists Corporation for rehearing of this cause, and the same being inspected, it is considered, adjudged and ordered that the motion be overruled.

APPLICATION FOR WRIT OF ERROR

* * * * *

FIRST POINT OF ERROR

(Germane to Appellant's first point in its Brief and the first ground in its Motion for Rehearing in the Court of Civil Appeals.)

The error of the Court in refusing to hold that Ordinance No. 11284 is unconstitutional because it restricts free communication in violation of the First and Fourteenth Amendments of the Constitution of the United States.

SECOND POINT OF ERROR

(Germane to Appellant's second point in its Brief and the second ground in its Motion for Rehearing in the Court of Civil Appeals.)

The error of the Court in refusing to hold that Ordinance No. 11284 is unconstitutional because it restricts free communication in violation of Article I, Section 8, of the Constitution of the State of Texas.

THIRD POINT OF ERROR

(Germane to Appellant's third point in its Brief and the third ground in its Motion for Rehearing in the Court of Civil Appeals.)

The error of the Court in refusing to hold that Ordinance No. 11284 is unconstitutional because the standards of classification in Section 46A-1(f) are vague and without legal meaning for censorship.

FOURTH POINT OF ERROR

(Germane to Appellant's fifth point in its Brief and the fourth ground in its Motion for Rehearing in the Court of Civil Appeals.)

The Court erred in sustaining the classification of "Viva Maria" as "not suitable for young persons." Appellee's testimony showed that this classification was made upon the basis that it was "sacrilegious".

FIFTH POINT OF ERROR

(Germane to Appellant's fifth point in its Brief and the fifth ground in its Motion for Rehearing in the Court of Civil Appeals.)

The Court erred in sustaining the classification of "Viva Maria" as "not suitable for young persons." Appellee's testimony showed that the community standard involved a geographic area of the City of Dallas only, and not of the State of Texas or the United States.

SIXTH POINT OF ERROR

(Germane to Appellant's sixth point in its Brief and the sixth ground in its Motion for Rehearing in the Court of Civil Appeals.)

The Court erred in finding that "Viva Maria" was "not suitable for young persons" in that the Court's judgment was based upon a few isolated scenes taken from the entire picture and not on its dominant theme as a whole.

SEVENTH POINT OF ERROR

(Germane to Appellant's seventh point in its Brief and the seventh ground in its Motion for Rehearing in the Court of Civil Appeals.)

The Court erred in refusing to hold that Article 527 of the Texas Penal Code preempted the field of regulating motion pictures from any municipality such as the City of Dallas.

Petitioner's Motion to Advance

TO THE HONORABLE SUPREME COURT OF TEXAS:

Now comes the Petitioner, INTERSTATE CIRCUIT, INC., joined by the Respondent, City of Dallas, and moves the Court to advance this case for consideration on the

pending Application for Writ of Error for the following reasons:

I.

The suit involves an appeal from a temporary injunction.

II.

The City of Dallas is enforcing a classification system on motion pictures. For this system to be legal, all parties recognize that a prompt judicial review is necessary.

III.

By seeking this advancement on the docket, the Petitioner does not concede that the classification system, and the procedures relating thereto, provide prompt judicial review; neither does the City of Dallas concede that prompt judicial review is denied if this motion is not granted.

IV.

This case is one of several arising under the terms of the ordinance. It is important for the parties here, and for the lower courts that will deal with these other cases, both at the trial and appellate levels, to have the issues of this case determined as soon as possible, if review is to be granted.

V.

Respondent, by joining here, does not concede that Writ of Error should be granted, but simply requests that the decision on the Application be determined as soon as possible.

VI.

In the event that the Application for Writ of Error is granted, this Petitioner and the Respondent request that the submission of this case be set at the Court's earliest convenience so that a decision can be reached on this matter.

WHEREFORE, PREMISES CONSIDERED, This Petitioner, Interstate Circuit, Inc., and the Respondent, City of Dallas, pray that the Court consider the Application for Writ of Error at the earliest convenience of this Court; and, further, that if the Writ of Error be granted, that the case be set for submission at the earliest convenience of the Court.

Supreme Court of Texas

July 27, 1966

Application of Interstate Circuit, Inc. and application of United Artists Corporation for writs of error to the Court of Civil Appeals for the Fifth Supreme Judicial District having been duly considered, and the Court having determined that the applications present no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said applications be, and hereby are, refused.

It is further ordered that applicants, Interstate Circuit, Inc., and United Artists Corporation pay all costs incurred on their respective applications.

Motion For Rehearing

To the Honorable Supreme Court of Texas:

"RECORD NOT FULLY REVIEWED

"Please don't deny this application for writ of error without examining the record! The motion picture 'The Virgin Spring', together with the necessary projection equipment, is a part of the record by stipulation. * * *"

So began the Motion for rehearing in *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 358 S.W. 2d 589, 354 S.W. 2d 597 (1962). This was the first motion picture censorship case to reach the Supreme Court of Texas in forty years, since *Xydias Amusement Company v. City of Houston*, 185 S.W. 415 (Tex. Civ. App. 1916) error ref.

Janus Films, Inc. v. City of Fort Worth, supra, squarely presented a question regarding the interpretation of Article 527 of the Texas Penal Code, together with questions of free speech under the First Amendment of the Constitution of the United States, and Article I, Section 8, of the Texas Constitution. Also involved was the fundamental question of whether or not the motion picture under consideration was obscene.

The Petitioner here would adopt the quoted language and ask the Court in this case not to deny the application for writ of error without examining the record. Such an abject plea can be justified only by the importance of protecting the

right of free speech guaranteed by Article I, Section 8, of the Texas Constitution, and by the First Amendment of the Constitution of the United States.

In the present case, the motion picture is a part of the record. It was viewed by the Court of Civil Appeals, and as was stated on page 17 of the Application for Writ of Error:

> "It is the duty of any court reviewing a motion picture case to examine the picture. *Jacobellis v. State of Ohio*, 378 U.S. 184, 84 S. Ct. 1676. This picture and the related projection equipment will be set up at a place of the Court's convenience, for viewing as a part of the record by agreement."

Are motion pictures entitled to the protection of the First Amendment of the Constitution of the United States as a method of free communication? Is Article I, Section 8, of the Texas Constitution, which guarantees free speech, to be construed by the Texas courts as including the commercial motion picture industry?

In 1952, the Supreme Court of the United States, in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 502, 72 S. Ct. 777, 781, said:

> "For the foregoing reasons, we conclude that expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments. To the extent that language in the opinion of *Mutual Films Corp. v. Industrial Comm.*, supra, is out of harmony with the views here set forth, we no longer adhere to it."

That opinion, of course, made no comment regarding Article I, Section 8, of the Texas Constitution, but it did overrule *Mutual Films Corp. v. Industrial Comm.*, 236 U.S. 233,

35 S. Ct. 387 (1915) which was the underlying bedrock of *Xydias Amusement Company v. City of Houston*, supra, which was also construed to apply to Article I, Section 8, of the Texas Constitution.

The *Burstyn* case was decided in 1952. Nine years later the Texas Legislature amended Article 527 of the Penal Code. Prior to that time, Article 527-b had stated, in Section 4:

> "The provisions of this Act shall not apply to any daily or weekly newspaper * * *"

The 1961 amendment of Article 527 exempted three classes of commercial motion pictures from the obscenity provisions, and said:

> "The provisions of this Act shall not apply to any motion pictures produced or manufactured as commercial motion pictures * * *"

A similar provision was given to newspapers by the next unnumbered paragraph of 527, Section 5, which stated:

> "The provisions of this Act shall not apply to any daily or weekly newspapers."

The only decision by the Texas court, construing this new language, was by the Court of Civil Appeals in the *Janus* case, supra, 354 S.W. 2d 597.

The history of this statute was recently the subject of a comment by the United States Court of Appeals for the Fifth Circuit in *Chemline, Inc., v. City of Grand Prairie*, et

al., ... F. 2d ..... (5th Cir. 1966) in an opinion rendered July 6, wherein it stated in part:

> "The only Texas case dealing with the effect of Article 527's exclusion is *Janus Films, Inc. v. City of Fort Worth*, Tex. Civ. App. 1962, 354 S.W. 2d, 597. Without explanation or discussion, it holds that the exclusion does not prevent home rule cities from prohibiting the exhibition of obscene pictures. The Texas Supreme Court in refusing a writ of error, n.r.e., 358 S.W. 2d 589, did the unusual thing of writing a brief opinion. The Court said that the trial court had not abused its discretion in denying a temporary injunction of the City ordinance, since the purpose of such injunction is to preserve the status quo and had the court granted it, the movie would have been shown and the status quo would not have been preserved."

The Court further stated:

> "This opinion is not to be construed as passing on the merits of the case in any respect."

The opinion went on to state that the abstention doctrine was not invoked because of the decision in *United States Service Life Insurance Company v. Delaney*, 386 S.W. 2d 648 (Tex. Civ. App. 1965), aff'd, ... Tex, ..., 396 S.W. 2d 855 (1965).

The present case, unlike *United States Service Life Insurance Company v. Delaney*, supra, does not seek an advisory opinion. Article 527 has been in dispute before in cases before this Court, is here now, and has been in dispute in other suits such as the *Chemline* case, supra. For this language to be construed to mean that every city and town can have a censor board, or, as the Respondents

here prefer to call it, the "Classification Board," appears to do violence to common sense, the meaning of the statute itself, and to be contrary to both of the constitutional provisions mentioned above.

Besides the ultimate question of determining whether "Viva Maria" is, along with the other descriptions used in the opinion of the Court of Civil Appeals, "patently offensive," the Supreme Court of Texas may wish to give guidance to the trial courts, the Courts of Civil Appeals, and to federal courts which deal with the question, in a proper interpretation of Article 527.

It is possible that Article I, Section 8, of the Texas Constitution, was not broad enough to include commercial motion pictures when they were classed as an item of free speech and free press in *Joseph Burstyn, Inc. v. Wilson*, supra. This does not seem logical to the Petitioner. It is possible that a very restrictive interpretation of the right of free communication under the First Amendment of the Constitution of the United States is to be placed upon the commercial motion picture industry in Texas. The Petitioner does not believe this, either. Yet, in fact, this is being done from time to time. Fort Worth did so in the *Janus* case, as did the Respondent here. The *Janus* decisions and the decision of the Court of Appeals in the present case certainly will encourage every municipality to form a censor or classification board, or both.

The 1961 amendment of Article 527 had for one of its purposes the exempting of certain classes of motion pictures from any regulation under this provision of the code. The

sole purpose of Article 527 is to restrict the display, distribution, and publication of obscene matters. The amendment of 1961, in specifically exempting from regulation certain classes of motion pictures, manifested a legislative intent that these classes of motion pictures should not be subject to regulation or restriction at the state and, by inference, local levels. The following language is found in many cases:

> "Intention of the Legislature is the dominant consideration in construing a statute." Calvert v. British-American Oil Producing Co., ... Tex. ....., 397 S.W. 2d 839, 842 (1965).

The Supreme Court is required to give the exemption written in Article 527 referring to certain classes of motion pictures the meaning the legislature intended the exemption to have, insofar as that is in the ability of the court. *Standard v. Sadler*, ... Tex. ....., 383 S.W. 2d 391 (1964).

The rights of free speech and free press have been described many times as fundamental freedoms. This has been done both by the Supreme Court of the United States and various appellate courts in all of the states, including Texas. Therefore, it can be presumed to be true.

The concept "writ refused, no reversible error", implies that there are errors of some note in the record. These may be great or small and they could include an improper interpretation of Article 527, of either of the constitutional provisions, or of the fact question itself, which is the duty of the appellate courts to examine in First Amendment cases;

according to the Supreme Court of the United States in *Jacobellis v. State of Ohio*, supra, cited above.

The Petitioner does not believe that the Texas law should be left in the position where twice the loss of the right of free speech is classed as an error, but not a "reversible error". Rule 434 and 483, T.R.C.P. on Harmless Error and No Reversible Error, are ordinarily thought of as applying to a matter of less importance than items found in the Bill of Rights, such as is freedom of speech, freedom of press and freedom of religion.

Unless this motion for rehearing is granted, there will be another case on the books in which denial of free speech in Texas is classed as only a harmless error.

There is no prompt judicial review.

Freedman v. State of Maryland, 380 U.S. 51, 85 S. Ct. 734 (1965) required that any system of prior restraint or censorship assure the exhibitor of a prompt judicial review. By using the temporary injunction procedure, as found in the Texas courts' system, and by an involved and intricate ordinance, the Respondent sought to gain priority in the hearing of cases in Texas courts. The history of this case shows that the courts have not allowed the respondents scheme to succeed. In *Interstate Circuit, Inc., et al., v. City of Dallas*, 249 F. Supp. 19, (N.D. Tex. 1965) decided December 23, the United States District Court for the Northern District of Texas held that Ordinance 11926 provided a system by which an exhibitor, such as the Petitioner here, could be assured of a prompt judicial determination. The

actual language of the opinion stated that the Ordinance afforded a system by which a case could be filed in the district court, appealed, and acted upon by the Supreme Court of Texas in thirty-five (35) days!

This case was filed February 14, 1966. On July 27, this Court denied a writ of error without deciding the case. This is only 163 days later. The case was filed as an appeal from the suit granting a temporary injunction and was therefore entitled to a statutory preference. A cursory examination of the numbers of the cases decided by this Court in recent weeks and the dates on which they were filed does not indicate that this suit, involving a temporary injunction and further involving the Constitutional right of free speech, was given any preferential treatment of measurable significance.

The joint motion to advance this case for early submission, setting forth the reasons therefor, was filed by the Petitioner and Respondent on the 7th day of June.

It is appropriate to note that after this motion was filed, there was a period of 50 days before the Court decided not to hear the case.

If the case had been set for submission, we presume that it would have been reached in due order, along with other cases at the beginning of the October term.

The foregoing comments are not made for the purpose of criticizing this Court, in any manner whatsoever. It is necessary to itemize these points for the purpose of showing that the entire concept underlying the Respondent's Ordi-

nance 11284 is simply not a fact. You cannot start a lawsuit in the State of Texas, go through the Court of Civil Appeals, and get a decision from the Supreme Court in thirty-five (35) days. You cannot get this decision in thirty-five (35) days even though the attorneys for the respective parties are personal friends and extend to each other every professional courtesy in a form of cooperation that is not inconsistent with protecting the rights of the respective clients.

Prompt judicial review is required of such ordinances by the opinion in *Freedman v. State of Maryland, supra.* In the present case, 163 days lapsed from its filing until the Texas Supreme Court refused a writ of error, without discussion of its merits. This period of time, plus whatever additional time might elapse until a decision is rendered on the merits, is not a prompt judicial review.

The Supreme Court of the United States recognized in *Bantam Books v. Sullivan,* 372 U.S. 58, 83 S. Ct. 631 (1963), that ordinarily the local retailer does not have the money to carry on litigation to protect the right to sell a particular book. A similar concept is true in the motion picture industry. In the present suit, the distributor has intervened. However, there are other cases presently pending where this did not happen. All of the parties here are somewhat in the same position as described by Justice Douglas in *England v. Louisiana State Bd. of* Med. Exam., 375 U.S. 411, 84 S. Ct. 461 (1964), where he said that litigants do not have long pockets.

The classifiication board here or the censor board in another case makes its point by simply refusing the permit and thus, free speech is denied unless a reasonably prompt,

comparatively economical determination can somehow be made by a court in Texas as to what Article 527 means. What is the law on this subject? How is it to be interpreted, properly, both by the attorneys in advising the clients and by the lower courts? As was so succinctly stated in the *Freedman* case, supra:

> " * * * Otherwise, litigation may be unduly expensive and protractive, or the victorious exhibitor may find the most propitious opportunity for exhibition past."

WHEREFORE, PREMISES CONSIDERED, Petitioner again reargues each of the points in its application for writ of error, and respectfully prays that this application be granted.

Supplemental Motion for Rehearing

TO THE HONORABLE SUPREME COURT OF TEXAS:

Now comes Interstate Circuit, Inc., one of the Petitioners herein, and files this, its Supplemental Motion for Rehearing, and as grounds therefor would respectfully show the following:

I.

The necessity for a prompt judicial review is an essential element for any system of censorship or prior restraint. *Freedman v. State of Maryland*, 380 U.S. 51, 85 S. Ct. 734 (1965).

The present case began on February 14, 1966, when the City of Dallas filed its suit for an injunction. The case was

filed in this Court on May 23, 1966, and the decision of the Court refusing the petition with the endorsement, "Writ Ref., n.r.e.", was dated July 27, 1966.

It has been approximately seven and one-half (7½) months from that date until this Court reconvenes for the October term.

The opinion of Judge Hughes in *Interstate Circuit, Inc. v. City of Dallas*, 249 F. Supp. 19 (N.D. Tex. 1965), was based on the assumption that the Texas courts provided a prompt final judicial review. In its argument in the Federal Court, the Respondent claimed that the courts of Texas gave preferential treatment to its cases. The Court of Civil Appeals did everything within its power to expedite the case in order that the classification ordinance could be sustained. The City of Dallas was not so fortunate in this Court. Here, even with a joint motion to advance the case, the suit received no preference whatsoever.

This is clearly demonstrated by a chart of ten cases before and after *Interstate Circuit, Inc., et al. v. City of Dallas*, Cause No. A-11, 490. This chart and the certificate of the Clerk of the Supreme Court of Texas shows twenty-one (21) cases beginning with A-11, 480, *Phillips et al v. Parrish, et al.*, and continuing through *City of Houston v. Fore*.

Several of the cases filed on May 23, 1966, or later, received action by this Court before July 27, 1966. Following

the chronological tables beginning with No. 1, those cases which were acted on before July 27 are Numbers 2, 3, 4, 5, 7, 9, 13, 14, and 15. The exact date of the action on the petition for writ of error is shown in Column 7 of the chart, with the number of days which passed between the filing of the petition and the action of the Court shown in Column 8.

The chart here shows no ascertainable preference accorded to the City of Dallas or its lawsuit. Neither was there any preference given to this particular kind of litigation.

It is important to state unequivocally that cases involving the City of Dallas, arising under its motion picture ordinance, do not receive preferential treatment. Unless preferential treatment is given, as Judge Hughes ruled in the first ordinance case, *Interstate Circuits, Inc. v. City of Dallas*, 247 F. Supp. 906 (N.D. Tex. 1965), Texas courts do not provide a prompt judicial review.

Therefore, the first ordinance was void. Without a prompt judicial review, this ordinance also should be held void.

Judge Hughes' opinion in the second ordinance case reached the United States Court of Appeals. In *Interstate Circuit, Inc. v. City of Dallas*, ... F. 2d ....., decided August 30, 1966, the Court sustained a test of "obscene for young people", but refused to sustain a test relating to any other subject, such as "harmful effects", "encouraging crime", "juvenile delinquency", etc.

There is a motion for rehearing presently pending in that case before the United States Court of Appeals, but, in any event, the Supreme Court of Texas is now asked to review

this record and to note that the ordinance as applied here does not determine that "Viva Maria" is "obscene when viewed by an audience of young persons."

A copy of the Chart, "Chart of Ten Cases Before and After *Interstate Circuit, Inc., et al. v. City of Dallas*, Cause No. A-11, 490, and Certificate of the Clerk of the Supreme Court of Texas", is included in the appendix of this Supplemental Motion. In addition, three duplicate original copies of this Chart, bearing the Certificate of the Clerk of the Supreme Court are included, but not attached.

WHEREFORE, PREMISES CONSIDERED, Petitioner again re-urges each of the points in its Application for Writ of Error, and respectfully prays that this Application be granted and that the decision of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, at Dallas, be reversed and rendered in favor of the Petitioner, or, in the alternative, that the Judgment of the Court of Civil Appeals and the District Court be reversed, and this cause be remanded for a trial on the merits in accordance with the instructions resulting from an opinion of this Court resolving the constitutional questions presented here.

Chart of Ten Cases Before and After *Interstate Circuit, Inc. et al., v. City of Dallas*, Cause No. A-11490

1. No.	2. S. Ct. No.	3. Style/Southwest Citation	4. Nature of Suit	5. Filed in S. Ct.	6. S. Ct. Action	7. Date	8. Lapsed Time Between Filing	9. Set for Sub-mission	10. Motion for Re-hearing Overruled
1.	A-11480	Phillips et al. v. Parrish et al., 401 S.W. 2d 347	Declaratory Judgment	5-19-66	Ref. N.R.E.	7-27-66	69 Days		
2.	A-11481	Roberts et ux. v. Hodges, 401 S.W. 2d 332	Suit on Okla. Judgment	5-23-66	Ref. N.R.E.	6-29-66	37 Days		
3.	A-11482	Petty v. Texas Employers Insurance Association, 401 S.W. 2d 678	Workmen's Compensation	5-23-66	Ref. N.R.E.	6-22-66	30 Days		7-20-66
4.	A-11483	Head v. City of Shore Acres, et al., 401 S.W. 2d 703	Compel Issuance of Permit	5-23-66	Ref. N.R.E.	6-15-66	23 Days		
5.	A-11484	Walton et al. v. Hardy, 401 S.W. 2d 614	Partition Suit	5-23-66	Ref. N.R.E.	6-15-66	23 Days		7-13-66
6.	A-11485	Flores et al. v. Great American Insurance Co., 401 S.W. 2d 690	Workmen's Compensation	5-23-66	Ref. N.R.E.	7-27-66	65 Days		
7.	A-11486	Universal Underwriters Ins. Co. v. Bounds, 401 S.W. 2d 865	Workmen's Compensation	5-23-66	Ref. N.R.E.	6-29-66	37 Days		
8.	A-11487	Moulton et al. v. Alamo Ambulance Service, 402 S.W. 2d 200	Personal Injury	5-23-66	Granted	7-27-66	65 Days	10-19-66	
9.	A-11488	Sanders v. Dunlap, 401 S.W. 2d 367	Trespass to Try Title	5-23-66	Ref. N.R.E.	6-15-66	23 Days		
10.	A-11489	Forristall et al. v. Federal Insurance Co., et al., 401 S.W. 2d 285	Declaratory Judgment	5-23-66	Ref. N.R.E.	7-27-66	65 Days		
11.	A-11490	Interstate Circuit, Inc., et al., v. City of Dallas, 402 S.W. 2d 770	Temporary Injunction—Free Speech	5-23-66	Ref. N.R.E.	7-27-66	65 Days		Pending

1. No.	2. S. Ct. No.	3. Style/Southwest Citation	4. Nature of Suit	5. Filed in S. Ct.	6. S. Ct. Action	7. Date	8. Lapsed Time Between Filing	9. Set for Submission	10. Motion for Rehearing Overruled
12.	A-11491	Texas & Pacific Railway Co. v. McCleery, 401 S.W. 2d 693	Personal Injury	5-23-66	Granted	7-27-66	65 Days	10-26-66	
13.	A-11492	Pierce v. Ford Motor Company, 401 S.W. 2d 355	Damage—Warranty Suit	5-24-66	Dismissed	6-22-66	29 Days		
14.	A-11493	National Life & Accident Insurance Co. v. Morris, 402 S.W. 2d 297	Insurance Policy	5-24-66	Ref. N.R.E.	6-29-66	36 Days		
15.	A-11494	Bsuse v. Sovereign Life Ins. Co., 401 S.W. 2d 926	Insurance—Personal Injury	5-25-66	Ref. N.R.E.	6-29-66	35 Days		7-20-66
16.	A-11495	State v. Nelson et vir., 401 S.W. 2d 880	Condemnation Proceeding	5-26-66	Ref. N.R.E.	7-27-66	62 Days		
17.	A-11496	Barrie et vir. v. Costello et vir., 401 S.W. 2d 707	Habeas Corpus Child Custody		Ref. N.R.E.	7-27-66	61 Days		
18.	A-11497	Roark v. Texas Municipal Retirement System, 401 S.W. 2d 913	Require Pension Payments	5-27-66	Ref. N.R.E.	7-27-66	61 Days		
19.	A-11498	International Motorist Assn. v. Aguilar, 402 S.W. 2d 516	Recover Attorney Fees	5-30-66	Still Pending				
20.	A-11499	Waco Transit Corp. et al. v. Transport Workers Union of America, Local No. 276 et al., 402 S.W. 2d 253	Arbitration—Collective Bargaining	5-31-66	Ref. N.R.E.	7-27-66	57 Days	10-26-66	
21.	A-11500	City of Houston v. Fore, 401 S.W. 2d 921	Street Paving Assessment	5-31-66	Granted	7-27-66	57 Days		

Order Overruling Motions for Rehearing

October 19, 1966

Motions of petitioners for rehearing of their applications for writs of error having been duly considered, it is ordered that said motions be, and hereby are, overruled.

Notice of Appeal to the Supreme Court of the United States

I. Notice is hereby given that Interstate Circuit, Inc., the Appellant above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Civil Appeals For The Supreme Judicial District of Texas Sitting at Dallas affirming judgment of the trial court entered in this action on April 5, 1966.

This Appeal is taken pursuant to 28 U.S. Code § 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Transcript of pleadings filed in the District Court containing, among other things, the following:
   a. Plaintiff's Original Petition.
   b. Answer in Intervention of United Artists Corporation.
   c. Defendant's Original Answer
   d. Trial Amendment (by the Plaintiff).
   e. Motion to Strike Answer in Intervention.
   f. Plaintiff's First Supplemental Petition.
   g. Temporary Injunction.

h. Motion to Send Original Exhibits as part of Record to Court of Civil Appeals.

i. Order to Send Exhibits in Original Form.

2. Supplemental Transcript.

3. Statement of Facts

4. Opinion and Concurring Opinion of the Court of Civil Appeals.

5. Judgment of the Court of Civil Appeals.

6. Motions for Rehearing.

7. Order Overruling Motion for Rehearing.

8. Petitions for Writ of Error.*

9. Transmittal letter to Honorable George H. Templin, Clerk of the Supreme Court of Texas from Justin G. Burt,

10. Motion to Advance Submission to Supreme Court.*

11. Order of the Supreme Court of Texas refusing Petition for Writ of Error.*

12. Motion for Rehearing in Supreme Court by Interstate Circuit, Inc.* .....

13. Motion for Rehearing by United Artists Corporation, Inc.*

14. Reply to Motions for Rehearing.*

15. Order of the Supreme Court of Texas overruling Motions for Rehearing on Petitions for Writ of Error.*

16. Chart of Ten Cases Before and After *Interstate Circuit, Inc., Et Al. v. City of Dallas*, Cause No. A-11490, certified by George H. Templin, Clerk of the Supreme Court of Texas.

17. This notice of Appeal.

III. The following questions are presented by this Appeal:

1. Whether Ordinance 11284 is unconstitutional because it does not guarantee a prompt final judicial decision to review actions of the Dallas Motion Picture Classification Board in classifying a motion picture as "not suitable for young persons"?

2. Whether Ordinance 11284 is unconstitutional because it prohibits the free exhibition of motion pictures on standards that are vague and ambiguous instead of limiting the restraint on free exhibition to those pictures which are obscene as that term has been defined by this Court?

3. Whether the Dallas Motion Picture Classification Board and the lower courts each applied unconstitutional standards in classifying the motion picture *Viva Maria* as "not suitable for young persons"? As sub-parts of this question, (a) it should be determined whether members of the Dallas Motion Picture Classification Board use the term "sacrilegious" as a basis for determining that the picture was "not suitable for young persons"; (b) whether the members of the Classification Board based their conclusion that the Picture was not suitable upon a few isolated scened [sic] and not on the dominant theme of the picture considered as a whole.

*These items are furnished as a separate certificate from the Clerk of the Supreme Court of Texas.